

103^D CONGRESS
2^D SESSION

H. R. 4206

To provide for the implementation of the Uruguay Round of the General Agreement on Tariffs and Trade concerning specific code section, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 1994

Mr. REGULA (for himself and Mr. MINETA) introduced the following bill; which was referred jointly to the Committees on Ways and Means, Rules, the Judiciary, and Foreign Affairs

A BILL

To provide for the implementation of the Uruguay Round of the General Agreement on Tariffs and Trade concerning specific code section, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “GATT Fair Trade Enforcement Act of 1994.”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short Title; Table of contents.

TITLE I—COUNTERVAILING AND ANTIDUMPING DUTY
AMENDMENTS

Sec. 101. Sales in home market for export to the United States.

- Sec. 102. Calculation of exporter's sales price when value added after importation.
- Sec. 103. Compensation awards.
- Sec. 104. Diversionary input dumping.
- Sec. 105. Upstream subsidies.
- Sec. 106. Sales at less than cost of production.
- Sec. 107. Prevention of circumvention.
- Sec. 108. Standing.
- Sec. 109. Selling, general and administrative expenses, and profit.
- Sec. 110. Reviews upon information or request or passage of time.
- Sec. 111. Currency conversion.
- Sec. 112. Sampling and averaging.
- Sec. 113. Market viability.
- Sec. 114. Negligible imports.
- Sec. 115. Captive production.
- Sec. 116. Duty as a coast.

TITLE II—INTELLECTUAL PROPERTY AMENDMENTS

- Sec. 201. International intellectual property protection objectives.
- Sec. 202. Fast track authority for New Free Trade Agreements.
- Sec. 203. Special 301.
- Sec. 204. Amendment of section 337 of the Traffic Act of 1930.
- Sec. 205. Generalized system of preferences.
- Sec. 206. Model Intellectual Property Agreement.
- Sec. 207. Efforts by United States Diplomats.
- Sec. 208. Private sector involvement in international dispute settlement.
- Sec. 209. Incentives to improve foreign intellectual property protection.
- Sec. 210. Intellectual property rights border enforcement maintenance.

TITLE III—MARKET OPENING MEASURES

- Sec. 301. Action by the President to open Foreign Markets.
- Sec. 302. Amendments to section 301.
- Sec. 303. Specialty steel product tariffs.

1 **TITLE I—COUNTERVAILING AND ANTIDUMPING DUTY**

2 **AMENDMENTS**

3 **5SEC. 101. SALES IN HOME MARKET FOR EXPORT TO THE**

4 **UNITED STATES.**

5 Section 485 of the Tariff Act of 1930, as amended
6 (19 U.S.C. 1485), is amended—

7 (1) by adding to the end of section (a) the fol-
8 lowing new paragraph:

1 “(5) Whether the merchandise is subject to any
2 outstanding antidumping or countervailing duty
3 order, and whether the importer disclosed to the
4 manufacturer or producer of the merchandise in the
5 country of exportation that the destination of the
6 merchandise was the United States.”; and

7 (2) by adding at the end of the section the fol-
8 lowing new paragraph:

9 “(h) DISCLOSURE IN ANTIDUMPING CASES.—Every
10 importer of record making entry under the provisions of
11 section 1484 of this title with respect to merchandise that
12 is subject to an antidumping duty order under the provi-
13 sions of section 1673 of this title, its agents or principals,
14 or any party related thereto within the meaning of section
15 1677(13) of this title, shall disclose to the manufacturer
16 or producer of such merchandise that the merchandise has
17 been purchased for exportation to the United States, un-
18 less, at the time of purchase, the importer of record, its
19 agents or principals, or any party related thereto within
20 the meaning of section 1677(13) of this title, did not in-
21 tend to export the merchandise to the United States, did
22 not import the merchandise for a period of at least six
23 months from the date of purchase, and does not regularly
24 or customarily engage in a pattern of importation of such
25 merchandise. Failure by an importer to disclose the fact

1 that merchandise subject to an antidumping duty order
2 was purchased for exportation to the United States or to
3 provide the certification required under paragraph (a)(5)
4 of this section, shall be subject to prosecution under sec-
5 tion 592 of this title.”.

6 **SEC. 102. CALCULATION OF EXPORTER'S SALES PRICE**
7 **WHEN VALUE ADDED AFTER IMPORTATION.**

8 Section 772 of the Tariff Act of 1930, as amended
9 (19 U.S.C. 1677a(c)), is amended by—

10 (1) by striking the period at the end of para-
11 graph (e)(3) and inserting in lieu thereof the follow-
12 ing: “, unless the administering authority determines
13 it is appropriate to use an alternate form of export-
14 er’s sales price pursuant to paragraph (f).”; and

15 (2) by inserting at the end of paragraph (e), as
16 amended by this Act, the following:

17 “(f) ALTERNATE BASES FOR EXPORTER’S SALES
18 PRICE.—Whenever there is any increase in the value of
19 imported merchandise, resulting from a process of manu-
20 facture or assembly, after importation and before its sale
21 to a person who is not the exporter of the merchandise,
22 to the extent that the increase in value substantially ex-
23 ceeds the value of the imported merchandise when resold
24 without any additional manufacture or assembly, the ‘ex-
25 porter’s sales price’ shall be—

1 “(1) the price at which such or similar mer-
2 chandise is sold or agreed to be sold in the United
3 States, before or after the time of importation, to a
4 person who is not the exporter of the merchandise,
5 with due allowance if merchandise described in para-
6 graph (B) or (C) of section 1677(16) of this title is
7 used in determining exporter’s sales price, and ad-
8 justed under paragraphs (d) and (e) of this sub-
9 section, or

10 “(2) the transaction value of the merchandise,
11 as determined under section 1401a(b) and adjusted
12 under paragraph (d) of this section, where the ad-
13 ministering authority is satisfied that such trans-
14 action value is less than or equal to the arm’s length
15 price to a person who is not the exporter of the mer-
16 chandise.”.

17 **SEC. 103. COMPENSATION AWARDS.**

18 Section 736 of the Tariff Act of 1930 (19 U.S.C.
19 1673e) is amended by adding at the end thereof the fol-
20 lowing new section:

21 **“SEC. 736A. COMPENSATION AWARDS.**

22 “(a) DEFINITIONS.—For the purposes of this sec-
23 tion—

24 “(1) the term ‘affected domestic producer’
25 means any manufacturer, producer, or worker rep-

1 representative that was a petitioner or interested party
2 in support of the petition with respect to which an
3 affirmative injury determination was made in con-
4 nection with an antidumping duty finding or order
5 or countervailing duty order;

6 “(2) the term ‘antidumping order’ means an
7 antidumping duty order published under section 736
8 of the Tariff Act of 1930 or an antidumping finding
9 published under the Antidumping Act, 1921;

10 “(3) the term ‘countervailing duty order’ means
11 a countervailing duty order published under sections
12 303 or 706 of the Tariff Act of 1930;

13 “(4) the term ‘Commission’ means the United
14 States International Trade Commission;

15 “(5) the term ‘Commissioner’ means the Com-
16 missioner of the United States Customs Service;

17 “(6) the term ‘dumped merchandise’ means
18 merchandise with respect to which an antidumping
19 duty is imposed under an antidumping order or find-
20 ing; and

21 “(7) the term ‘subsidized merchandise’ means
22 merchandise with respect to which a countervailing
23 duty is imposed under a countervailing duty order.

24 “(b) APPLICATION PROCESS.—The Commissioner of
25 the Customs Service shall prescribe procedures governing

1 when and the form and manner in which compensation
2 awards shall be made annually, at the latest within thirty
3 days of the release of the Annual Report on the Status
4 of the Antidumping/ Countervailing Duty Program.

5 “(c) DETERMINATION OF COMPENSATION.—

6 “(1) The Commission shall forward to the Com-
7 missioner within sixty days of the effective date of
8 this section or within sixty days of the issuance of
9 an antidumping or countervailing duty order after
10 the effective date of this section a list of petitioners
11 and those companies that indicated support of the
12 petition by letter or through questionnaire response
13 as well as a confidential tabulation of the dollar
14 value of shipments for each petitioner or company in
15 support of the petition during the last year covered
16 by the original Commission investigation. The con-
17 fidentiality of the data submitted by the Commission
18 to the Commissioner shall be maintained. Where no
19 injury test was required, the Commissioner shall
20 within one hundred and eighty days of the publica-
21 tion of a countervailing duty order after the effective
22 date of this section obtain information from the
23 named petitioners for the most recent calendar year
24 shipment values.

1 “(2) The Commissioner shall publish in the
2 Federal Register at least thirty days prior to the is-
3 suance of payments a notice of intention to distrib-
4 ute compensation and the list of companies eligible
5 based on the list obtained from the Commission.

6 “(3) The Commissioner shall distribute all
7 funds (including all interest earned) from assess-
8 ments received in the completed fiscal year, from the
9 appropriate special compensation account established
10 under subsection (d), to petitioners and those in
11 support according to the relative shipment values
12 supplied by the Commission pursuant to subpara-
13 graph (1).

14 Upon the date an antidumping duty order takes ef-
15 fect the Commissioner.

16 “(4) Compensation awards payable under this
17 section shall be provided to the affected domestic
18 producers to be used solely for the purpose of fund-
19 ing a pension plan, fund, or program maintained or
20 established for the purpose of providing—

21 “(A) medical, surgical, or hospital care
22 benefits;

23 “(B) benefits in the event of sickness, acci-
24 dent, disability, or death;

1 “(C) benefits in the event of plant closure
2 or layoff; or

3 “(D) benefits from a nonqualified pension
4 plan that provides benefits in the event of a ter-
5 mination of a qualified pension plan;

6 up to an amount equal to the amount needed to
7 maintain sufficient cash and marketable securities in
8 the plan to pay projected benefits and reasonable
9 plan administration costs for twenty-four months
10 commencing from the date of receipt of the com-
11 pensation award. If sufficient cash and marketable
12 securities exist to fund the plan, fund, or program
13 as required under this section then the compensation
14 award may be used as deemed appropriate by the in-
15 dividual domestic producer.

16 “(5) If a compensation award payable under
17 paragraph (3) cannot be received by an eligible do-
18 mestic producer due to such pension plan, fund, or
19 program being already fully funded then such mon-
20 ies may be used by the domestic producer for re-
21 search and development expenses, as approved by
22 the Secretary.

23 “(d) SPECIAL COMPENSATION ACCOUNTS.—

24 “(1) Within fourteen days of the effective date
25 of this provision for outstanding antidumping duty

1 orders and findings, or for outstanding countervail-
2 ing duty orders, or within fourteen days of the date
3 an antidumping or countervailing duty order takes
4 effect, the Secretary of the Treasury (hereafter re-
5 ferred to as the Secretary in this section) shall es-
6 tablish in the Treasury of the United States a spe-
7 cial compensation account with respect to the order.

8 “(2) The Secretary shall deposit into a special
9 compensation account all antidumping or counter-
10 vailing duties, including interest on such duties, that
11 are collected under the antidumping order or finding
12 or countervailing duty order with respect to which
13 the account was established.

14 “(3) The monies in a special compensation ac-
15 count shall be available for payment of compensation
16 awards issued under section (c) to the extent of ac-
17 tual assessments, including interest.

18 “(4) The Commissioner shall by regulation pre-
19 scribe the time and manner in which payment of
20 compensation awards from special compensation ac-
21 counts will be made.

22 “(5) The compensation awards and special com-
23 pensation accounts will remain in existence until all
24 duties relating to an order which has been termi-
25 nated are liquidated and all funds distributed to the

1 domestic parties entitled to receipts of same under
2 this section. Any amounts unable to be distributed
3 within ninety days of the time of the final distribu-
4 tion of all duties of a terminated or shall be turned
5 over to the general Treasury.”.

6 **SEC. 104. DIVERSIONARY INPUT DUMPING.**

7 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
8 iff Act of 1930 (19 U.S.C. 1677 et seq.) is amended by
9 inserting after section 771B the following new section:

10 **“SEC. 771C. DIVERSIONARY INPUT DUMPING.**

11 “For purposes of this title, diversionary input dump-
12 ing occurs when—

13 “(1) a producer or manufacturer incorporates
14 into merchandise under investigation a component or
15 a material which is the subject of—

16 “(A) an antidumping duty order issued
17 under section 736,

18 “(B) a finding issued under the Antidump-
19 ing Act, 1921, or

20 “(C) an international arrangement or
21 agreement described in section 734, if such ar-
22 rangement or agreement was entered into after
23 an affirmative preliminary determination was
24 made under section 733(b), and

1 “(2) the producer or manufacturer under inves-
2 tigation purchased the material or component at a
3 price which is less than the foreign market value
4 (determined under section 773(e)).”.

5 (b) FOREIGN VALUE.—

6 (1) IN GENERAL.—Paragraph (2) of section
7 773(a) of such Act (19 U.S.C. 1677b(A)(2)) is
8 amended by inserting “(or, if the administering au-
9 thority finds there is a reasonable basis to believe
10 that diversionary input dumping is occurring which
11 has a significant effect on the cost of producing the
12 merchandise under investigation)” after paragraph
13 (1)(A).

14 (2) SPECIAL RULE FOR DIVERSIONARY INPUT
15 DUMPING.—Section 773(e) of such Act (19 U.S.C.
16 1677b(e)) is amended by adding at the end thereof
17 the following new paragraph:

18 “(5) DIVERSIONARY INPUT DUMPING.—If the
19 administering authority determines that diversionary
20 input dumping is occurring and has a significant ef-
21 fect on the cost of producing the merchandise under
22 investigation, the administering authority shall, in
23 calculating the cost of the material or component
24 under paragraph (1)(A), include the amount of the
25 diversionary input dumping determined to exist with

1 respect to such material or component. For purposes
2 of the preceding sentence, the amount of the diver-
3 sionary input dumping is the difference, if any, by
4 which—

5 “(A) the foreign market value of the input
6 material or component involved, as calculated
7 under this title, exceeds

8 “(B) the purchase price of the input mate-
9 rial or component paid by the producer or man-
10 ufacturer of the merchandise under investiga-
11 tion.”.

12 (c) PROCEDURES FOR INITIATING AN ANTIDUMPING
13 INVESTIGATION.—Section 732(a) of such Act (19 U.S.C.
14 1673a(A)) is amended by adding at the end thereof the
15 following new paragraph:

16 “(3) CASES INVOLVING DIVERSIONARY INPUT
17 DUMPING.—The administering authority shall com-
18 mence an antidumping investigation whenever it has
19 reasonable grounds to believe or suspect that—

20 “(A) diversionary input dumping (as de-
21 fined in section 771(c)) is occurring,

22 “(B) such diversionary input dumping has
23 a significant effect on the cost of producing the
24 merchandise under investigation, and

1 “(C) subsequent to the imposition of an
2 antidumping duty order or entry into force of
3 an international agreement relating to imports
4 into the United States of the material or com-
5 ponent in question, shipments to the United
6 States of the merchandise under investigation
7 have increased (either in quantity or market
8 share).”.

9 (d) TIMETABLE FOR PRELIMINARY DETERMINATION
10 BY ADMINISTERING AUTHORITY.—Section 733(b)(1) of
11 such Act (19 U.S.C. 1673b(b)(1)) is amended by adding
12 at the end thereof the following new subparagraph:

13 “(D) IF DIVERSIONARY INPUT DUMPING
14 INVOLVED.—If, as part of a petition filed under
15 section 732(b), or an investigation commenced
16 under section 732(a), the administering author-
17 ity has reasonable grounds to believe or suspect
18 that diversionary input dumping is occurring,
19 the administering authority may treat the inves-
20 tigation as an extraordinarily complicated case
21 under subsection (c) and may extend the period
22 of time for making a preliminary determination
23 accordingly.”.

24 (e) CLERICAL AMENDMENT.—The table of contents
25 for subtitle VII of the Tariff Act of 1930 is amended by

1 inserting after the item relating to section 771B the fol-
2 lowing new item:

“Sec. 771C. Diversionary input dumping.”.

3 **SEC. 105. UPSTREAM SUBSIDIES.**

4 (a) DEFINITION.—Section 771A(a) of the Tariff Act
5 of 1930 (19 U.S.C. 1677–1(a)) is amended in its last sen-
6 tence by inserting after “subsidy is provided” the words
7 “or authorized”.

8 (b) DETERMINATION OF COMPETITIVE BENEFIT IN
9 UPSTREAM SUBSIDIES.—Section 771A(b)(1) of the Tariff
10 Act of 1930 (19 U.S.C. 1677–1(b)(1)) is amended—

11 (1) by striking “Except” and inserting “(A)
12 Except,”

13 (2) by striking “another seller” and inserting
14 “an unsubsidized seller in subparagraph (A), as re-
15 designated by paragraph (1), and

16 (3) by adding at the end thereof the following
17 new paragraph—

18 “(B) For purposes of subparagraph (A),
19 the administering authority shall determine the
20 price that the manufacturer or producer would
21 otherwise pay for the input product in obtaining
22 it from an unsubsidized seller by applying the
23 first of the following factors that may apply—

24 “(i) the price paid (including any de-
25 livery fees) by the manufacturer or pro-

1 ducer to an unsubsidized seller located in
2 the same country as the seller of the input
3 product,

4 “(ii) the price paid (including any de-
5 livery fees) by the manufacturer or pro-
6 ducer to an unsubsidized seller located in
7 a country other than the country of the
8 seller of the input product,

9 “(iii) information on prices (including
10 all delivery fees) from an unsubsidized sell-
11 er of the input product located in the same
12 country as the subsidized seller of the
13 input product, or

14 “(iv) information on prices (including
15 all delivery fees) from an unsubsidized sell-
16 er of the input product located in a coun-
17 try other than the country of the sub-
18 sidized seller of the input product.”.

19 **SEC. 106. SALES AT LESS THAN COST OF PRODUCTION.**

20 Section 773(b) of the Tariff Act of 1930 (19 U.S.C.
21 1677b(b)) is amended by striking all that follows “made
22 at less than the cost of producing the merchandise.” and
23 inserting in lieu thereof the following: “In the determina-
24 tion of foreign market value, the administering authority
25 shall disregard sales made at less than cost of production

1 if such sales have been made in substantial quantities over
2 the period of investigation or review and at prices which
3 do not permit the recovery of all costs within a reasonable
4 period of time in the ordinary course of trade. Whenever
5 sales are disregarded by virtue of being made at less than
6 the cost of production and the remaining sales, made at
7 not less than the cost of productions, constitute less than
8 30 percent of the volume of sales of the merchandise under
9 consideration the administering authority shall employ the
10 constructed value of the merchandise to determine its for-
11 eign market value. For purposes of this subsection the fol-
12 lowing provisions shall apply:

13 “(1) Sales below cost shall be deemed by the
14 administering authority to have been made in sub-
15 stantial quantities if—

16 “(A) the weighted average selling price for
17 the period of investigation is less than the
18 weighted average cost of production for the
19 merchandise in question for the period, or

20 “(B) the volume of sales found to be below
21 cost represents not less than 20 percent of the
22 volume of such merchandise sold.

23 “(2) In investigations under section 1673, the
24 administering authority shall calculate the cost of

1 producing the merchandise for the period of inves-
2 tigation.

3 “(3) In administrative reviews under section
4 1675, the administering authority shall calculate the
5 cost of producing the merchandise based on the
6 weighted average cost for the period or periods dur-
7 ing the review that the administering authority de-
8 termines to be reasonable for comparison to prices.

9 “(4) Prices determined to be below cost at the
10 time of sale shall not be considered to provide for
11 the recovery of costs within the reasonable period of
12 time (not to exceed the period of investigation or re-
13 view), unless the administering authority determines
14 that such prices are above cost for the period for
15 which costs were calculated for purposes of subpara-
16 graphs (2) and (3) of this section.

17 “(5) For the purposes of determining cost of
18 productions and constructed value, the administering
19 authority shall examine the allocation of non-recur-
20 ring costs to current and future production. As long
21 as the allocations are reasonably reflective of the
22 costs associated with the production and sale of the
23 product under consideration, any allocations consist-
24 ent with the generally accepted accounting principles
25 of the exporting country will normally be accepted.

1 The administering authority shall confirm that all
2 non-recurring costs from the period prior to the pe-
3 riod of investigation that benefit current production
4 have been appropriately allocated to current and fu-
5 ture production.

6 “(6) For the purposes of determining cost of
7 production and constructed value, unless already re-
8 flected in the cost allocations, appropriate adjust-
9 ments shall be made for circumstances in which cer-
10 tain non-recurring costs during the period of inves-
11 tigation are affected by start-up operations. The ad-
12 justment made for start-up operations shall reflect
13 the per unit costs of labor and overhead. For pur-
14 poses of this paragraph the term ‘start-up period’
15 shall mean the period prior to the commencement of
16 commercial production (as defined in the normal
17 course of business by the industry in question in the
18 exporting country) of a new general category of mer-
19 chandise.”

20 **SEC. 107. PREVENTION OF EVASION OF ANTIDUMPING AND**
21 **COUNTERVAILING DUTY ORDERS.**

22 (a) MERCHANDISE COMPLETED OR ASSEMBLED IN
23 THE UNITED STATES.—Section 781(a) of the Tariff Act
24 of 1930 (19 U.S.C. 1677j(a)) is amended to read as
25 follows:

1 “(a) MERCHANDISE COMPLETED OR ASSEMBLED IN
2 THE UNITED STATES.—

3 “(1) IN GENERAL.—In determining whether im-
4 ported materials or components are circumventing
5 an antidumping or countervailing duty order or find-
6 ing and whether to include such materials or compo-
7 nents in that order or finding, the administering au-
8 thority shall consider—

9 “(A) the pattern of trade,

10 “(B) the value and sources of supply of
11 materials or components historically used in
12 completion or assembly of the merchandise sub-
13 ject to an antidumping or countervailing duty
14 order,

15 “(C) whether the manufacturer or exporter
16 of the materials or components is related to the
17 person who assembles or completes the mer-
18 chandise sold in the United States from the ma-
19 terials or components produced in the foreign
20 country with respect to which the order or find-
21 ing described in paragraph (2) applies, and

22 “(D) whether imports into the United
23 States of the materials or components produced
24 in such foreign country have increased after the
25 issuance of such order or finding.

1 “(2) MERCHANDISE THAT MAY BE INCLUDED
2 IN ORDER OR FINDING.—If—

3 “(A) merchandise sold in the United
4 States is of the same class or kind as any other
5 merchandise that is the subject of—

6 “(i) an antidumping duty order issued
7 under section 736,

8 “(ii) a finding issued under the Anti-
9 dumping Act of 1921, or

10 “(iii) a countervailing duty order is-
11 sued under section 706 or 303;

12 “(B) such merchandise sold in the United
13 States is completed or assembled in the United
14 States from materials or components supplied
15 by the exporter or producer with respect to
16 which such order of finding applies, from sup-
17 pliers that have historically supplied the mate-
18 rials or components to that exporter or pro-
19 ducer, or from any party supplying materials or
20 components on behalf of such an exporter or
21 producer;

22 “(C) the value of the imported materials
23 and components referred to in subparagraph
24 (B), whether considered individually or collec-
25 tively, is significant in relation to the total value

1 of all materials and components used in the as-
2 sembly or completion operation, excluding pack-
3 aging, of the imported merchandise covered by
4 the order or finding; and

5 “(D) consideration of the factors set forth
6 in paragraph (1) otherwise establishes a pattern
7 of circumvention with the effect of evading an
8 antidumping or countervailing duty order or
9 finding;

10 the administering authority, after taking into ac-
11 count any advice provided by the Commission under
12 subsection (e), may include within the scope of such
13 order or finding the imported materials or compo-
14 nents referred to in subparagraphs (B) and (C) that
15 are used in the completion or assembly of the mer-
16 chandise in the United States at any time such
17 order or finding is in effect.”.

18 (b) MERCHANDISE COMPLETED OR ASSEMBLED IN
19 OTHER FOREIGN COUNTRIES.—Section 781(b) of the
20 Tariff Act of 1930 (19 U.S.C. 1677j(b)) is amended to
21 read as follows:

22 “(b) MERCHANDISE COMPLETED OR ASSEMBLED IN
23 OTHER FOREIGN COUNTRIES.—

24 “(1) IN GENERAL.—In determining whether
25 merchandise complete or assembled in a foreign

1 country is circumventing an antidumping or counter-
2 vailing duty order or finding and whether to include
3 such merchandise in that order or finding, the ad-
4 ministering authority shall consider—

5 “(A) the pattern of trade,

6 “(B) the value and sources of supply of
7 materials or components historically used in
8 completion or assembly of the merchandise sub-
9 ject to an antidumping or countervailing duty
10 order,

11 “(C) whether the manufacturer or exporter
12 of the merchandise described in paragraph
13 (2)(B) is related to the person who used the
14 merchandise described in subparagraph (2)(B)
15 to assemble or complete in the foreign country
16 the merchandise that is subsequently imported
17 into the United States, and

18 “(D) whether imports into the foreign
19 country of the merchandise described in sub-
20 paragraph (2)(B) have increased after the issu-
21 ance of such order or findings.

22 “(2) MERCHANDISE THAT MAY BE INCLUDED
23 IN ORDER OR FINDING.—If—

24 “(A) merchandise imported into the United
25 States is either of the same class or kind or in-

1 corporate an essential component that is of the
2 same class or kind as merchandise produced in
3 a foreign country that is the subject of—

4 “(i) an antidumping duty order issued
5 under section 736,

6 “(ii) a finding issued under the Anti-
7 dumping Act, 1921, or

8 “(iii) a countervailing duty order is-
9 sued under section 706 or section 303; and

10 “(B)(i) before importation into the United
11 States, such imported merchandise is completed
12 or assembled in another foreign country from
13 merchandise which is subject to such order or
14 finding, is produced in the foreign country with
15 respect to which such order of finding applies,
16 or is supplied by the exporter or producer with
17 respect to which such order of finding applies
18 or by suppliers that have historically supplied
19 the materials or components to that exporter or
20 producer, and such merchandise which is used
21 in the assembly or completion of the imported
22 merchandise has a value that is significant in
23 relation to the total value of all materials or
24 components used in the assembly or completion
25 operation, excluding packaging; or

1 “(ii) consideration of the factors set forth
2 in paragraph (1) otherwise establishes a pattern
3 of circumvention with the effect of evading a
4 countervailing or antidumping duty order or
5 findings; and

6 “(C) the administering authority deter-
7 mines that action is appropriate under this
8 paragraph to prevent evasion of such order of
9 findings,

10 the administering authority, after taking into ac-
11 count any advice provide by the Commission under
12 subjection (e), may include such imported merchan-
13 dise within the scope of such order or finding at any
14 time such order of finding is in effect.”.

15 (c) CONSTRUCTION PROVISION.—Section 781 of the
16 Tariff Act of 1930 (19 U.S.C. 1677j) is amended by add-
17 ing at the end thereof the following new subsection:

18 “(f) CONSTRUCTION PROVISION.—Nothing in this
19 title shall be deemed to limit the authority of the admin-
20 istering authority to include provisions in any final order
21 issued pursuant to—

22 “(1) an antidumping order issued under section
23 736,

24 “(2) a finding issued under the Antidumping
25 Act of 1921, or

1 “(3) a countervailing duty order issued under
2 section 706 or section 303,
3 the purpose of which is to prevent the evasion of any rem-
4 edy provided for in such finding or order or to otherwise
5 safeguard the integrity of such finding or order.”.

6 (d) CIRCUMVENTION TIMELINES AND PROCEDURAL
7 REQUIREMENTS.—Section 781(a) of the Tariff Act of
8 1930 (19 U.S.C. 1677j(a)), as amended by this Act, is
9 amended by adding at the end thereof the following:

10 “(3) CIRCUMVENTION TIMELINES AND PROCE-
11 DURAL REQUIREMENTS.—

12 “(A) Upon the filing of a petition contain-
13 ing allegations of circumvention of antidumping
14 and countervailing duty orders, the administer-
15 ing authority will determine within twenty days
16 whether to initiate an investigation.

17 “(B) Within one hundred-eighty days of
18 the initiation of an investigation, the admin-
19 istering authorities will make a preliminary af-
20 firmative or negative determination.

21 “(C) The administering authority will give
22 the parties the opportunity to file briefs and
23 participate in a hearing after the preliminary
24 determination.

1 “(D) The administering authority will
2 issue a final determination within seventy-five
3 days after the preliminary determination.

4 “(E) The administering authority will give
5 interested parties the opportunity to obtain con-
6 fidential information under the administering
7 authority’s administrative protective order pro-
8 cedures.”.

9 **SEC. 108. STANDING.**

10 Section 732(b) of the Tariff Act of 1930 (19 U.S.C.
11 1673a(b), as amended by this Act, is amended by adding
12 the following at the end thereof:

13 “(4) STANDING.—

14 “(A) Upon examination of a petition that
15 is filed, accompanied by supporting evidence, al-
16 leging that the petitioning members of the do-
17 mestic industry account for 25 percent or more
18 of the total production of the like product pro-
19 duced by the domestic industry, the administer-
20 ing authority shall not be required to further
21 investigate the standing of petitioners unless a
22 written objection to initiation is filed by a mem-
23 ber of the domestic industry.

24 “(B) Where a petition is filed without al-
25 leging the support of at least 25 percent of the

1 total domestic production of the like product,
2 the administering authority shall—

3 “(i) request an expression of support
4 or opposition from members of the domes-
5 tic industry within five days after the date
6 of filing; and

7 “(ii) initiate the investigation if other
8 requirements are met, and the petition is
9 supported by members of the domestic in-
10 dustry whose collective output constitutes
11 25 percent or more of production of the
12 like product or supported by members of
13 the domestic industry whose collective out-
14 put constitutes more than 50 percent of
15 the total production of the like product
16 produced by that portion of the domestic
17 industry expressing an opinion or, in cases
18 of fragmented industries involving a large
19 number of producers, where sampling of
20 opinion determines that the petition is sup-
21 ported by a proportion of members of the
22 domestic industry whose collective output,
23 as applied to the industry as a whole,
24 would constitute more than 50 percent of
25 the total production of the like product.

1 “(C) If there is a written objection by a
2 member of the domestic industry within five
3 days after publication of the notice of initiation,
4 the administering authority shall poll members
5 of the domestic industry and an affirmative
6 final determination under 1673d(a) of this title
7 shall not be issued unless the petition is sup-
8 ported by members of the domestic industry
9 whose collective output constitutes more than
10 50 percent of the total production of the like
11 product produced by that portion of the domes-
12 tic industry expressing support or opposition to
13 the petition or, in cases of fragmented indus-
14 tries involving a large number of producers,
15 where sampling of opinion determines that the
16 petition is supported by a proportion of mem-
17 bers of the domestic industry whose collective
18 output, as applied to the industry as a whole,
19 constitutes more than 50 percent of the total
20 production of the like product. At least 25 per-
21 cent of the domestic industry must support the
22 petition.

23 “(D) Expressions of opposition to initi-
24 ation or continuation of an investigation under
25 this title shall be disregarded if such opposition

1 is made by a producer that is related to the ex-
2 porters or importers, or that is itself an im-
3 porter of the allegedly dumped merchandise.

4 “(E) An affirmative statement of support
5 by a union or other worker group in any com-
6 pany shall constitute support for the petition
7 from that company.

8 “(F) Nothing in this section shall preclude
9 self-initiation of an investigation, and the provi-
10 sions of this section shall not apply in the case
11 of self-initiation.

12 “(G) These provisions shall not apply to
13 reviews of orders conducted pursuant to section
14 1675 of title 19, United States Code.

15 “(H) In investigations of regional indus-
16 tries, pursuant to section 1677(4)(C) of title
17 19, United States Code, the domestic industry’s
18 production shall be limited, for purposes of this
19 section, to domestic production in the region or
20 regions as defined in the petition.”.

21 **SEC. 109. SELLING, GENERAL AND ADMINISTRATIVE EX-**
22 **PENSES, AND PROFIT.**

23 (a) Section 771 of the Tariff Act of 1930, as amend-
24 ed (19 U.S.C. 1677), is amended by adding the following
25 new paragraph:

1 “(21) SAME GENERAL CATEGORY OF MERCHAN-
2 DISE.—The term ‘same general category of mer-
3 chandise’ means the most discrete general grouping
4 of products in terms of physical characteristics and
5 uses which contains the class or kind of merchandise
6 subject to investigation.”.

7 (b) Section 773(e)(1) of the Tariff Act of 1930, as
8 amended (19 U.S.C. 1677b(e)(1)), is amended by striking
9 paragraph (B) and inserting in lieu thereof the following:

10 “(B) an amount for selling, general and
11 administrative expenses equal to that incurred
12 on sales of merchandise of the same class or
13 kind as the merchandise under consideration
14 which are made by the exporter or producer
15 under investigation, in the usual commercial
16 quantities and in the ordinary course of trade,
17 expressed as a percentage of cost as defined in
18 subparagraph (A), except that when such
19 amounts cannot be determined on this basis,
20 they shall be based on any other evidence that
21 the administering authority determines to be
22 reasonably representative of such selling, gen-
23 eral and administrative expenses for the same
24 class or kind of merchandise or the same gen-

1 eral category of merchandise, which shall be
2 based on the greatest of—

3 “(i) the actual expenses incurred by
4 the exporter or producer in question on
5 production and sales in the domestic mar-
6 ket of the country of origin of the same
7 general category of merchandise;

8 “(ii) the weighted average of the ac-
9 tual expenses incurred or realized by other
10 exporters or producers subject to investiga-
11 tion on production and sales of the same
12 class or kind of merchandise in the domes-
13 tic market of the country or origin;

14 “(iii) the weighted average of the ac-
15 tual expenses incurred by other exporters
16 or producers subject to investigation on
17 production and sales of the same general
18 category of merchandise in the domestic
19 market of the country of origin; and

20 “(iv) evidence of selling, general and
21 administrative expenses of producers in the
22 United States of the same like product or
23 same general category of merchandise,
24 where the administering authority deter-
25 mines that information on such expense for

1 the same class of kind or same general cat-
2 egory of merchandise in the domestic mar-
3 ket of the country of origin is not available
4 or is not representative.”.

5 (c) Section 773(e)(1) of the Tariff Act of 1930, as
6 amended (19 U.S.C. 1677b(e)(1)), is amended by striking
7 paragraph (C) as (E) and inserting the following new sub-
8 paragraphs:

9 “(C) an amount for profit equal to that ac-
10 tually earned by the exporter or producer on
11 sales in the country of exportation of such or
12 similar merchandise, in the usual commercial
13 quantities and in the ordinary course of trade,
14 subject to the requirements of subsections
15 1677b(b) of this section and excluding any sales
16 between related parties that are not at arm’s
17 length prices, except that when such amounts
18 are not sufficient to recover a reasonable cost of
19 capital in the country of exportation or other-
20 wise cannot be determined on this basis, they
21 shall be based on the greatest of—

22 “(i) the actual profits realized by the
23 exporter or producer in question on sales
24 in the country of exportation of the same
25 general category of merchandise, excluding

1 sales of the class or kind of merchandise in
2 that market;

3 “(ii) the weighted average of the ac-
4 tual profits earned by other exporters or
5 producers subject to investigation on sales
6 of the same class or kind of merchandise
7 in the country of exportation;

8 “(iii) the weighted average of the ac-
9 tual profits earned by other exporters or
10 producers subject to investigation on sales
11 in the country of exportation of the same
12 general category of merchandise, excluding
13 sales of the class or kind of merchandise in
14 that market;

15 “(iv) the actual profits earned by the
16 exporter or producer in question on sales
17 during the most recent period outside the
18 period of investigation or review in the
19 country of exportation of the same class or
20 kind of merchandise, in the usual commer-
21 cial quantities and in the ordinary course
22 of trade; or

23 “(v) any other evidence that the ad-
24 ministering authority determines to be rea-
25 sonably probative of the amount of profit

1 not less than an amount sufficient to re-
2 cover the cost of capital in the country of
3 exportation,
4 provided that the amount for profit so estab-
5 lished under this subsection shall not exceed the
6 amount determined under subsection (iii), if
7 any.

8 **SEC. 110. REVIEWS UPON INFORMATION OR REQUEST OR**
9 **PASSAGE OF TIME.**

10 Section 751(b) of the Tariff Act of 1930 (19 U.S.C.
11 1675) is amended to read as follows:

12 “(b) REVIEWS UPON INFORMATION OR REQUEST OR
13 PASSAGE OF TIME.—

14 “(1) IN GENERAL.—Whenever the administer-
15 ing authority or the Commission receives informa-
16 tion concerning, or a request by an interested party
17 within the meaning of section 1677(9) of this title
18 for the review of, an agreement accepted under sec-
19 tion 1671c or 1673c of this title or an antidumping
20 or countervailing duty order under this title or an
21 antidumping finding under the Antidumping Act of
22 1921, which shows changed circumstances sufficient
23 to warrant a review of such determination, finding
24 or order, it shall conduct such a review after pub-
25 lishing notice of the review in the Federal Register.

1 In reviewing its determination under section
2 1671c(h)(2) of this title, the Commission shall con-
3 sider whether, in the changed circumstances, an
4 agreement accepted under section 1671c or 1673c(c)
5 of this title continues to eliminate completely the in-
6 jurious effects of imports of the merchandise.

7 “(2) LIMITATION OF PERIOD OF REVIEW.—In
8 the absence of good cause shown—

9 “(A) the Commission may not review a de-
10 termination under 1671d(b) or 1673d(b) of this
11 title; and

12 “(B) the administering authority may not
13 review a finding of dumping or subsidies under
14 this title or section 1303 of title 19, United
15 States Code, or of dumping under the Anti-
16 dumping Act of 1921,

17 less than twenty-four months after the date of publi-
18 cation of notice of the order, finding, determination
19 or suspension agreement.

20 “(3) FIVE YEAR REVIEW.—Notwithstanding
21 subparagraphs (1) and (2), the administering au-
22 thority shall initiate once each five years a review to
23 determine whether the expiry of a suspension agree-
24 ment under section 1671c or 1673c, an antidumping
25 or countervailing duty order under this title, or an

1 antidumping finding under the Antidumping Act of
2 1921, would be likely to lead to continuation or re-
3 currence of dumping and injury whenever—

4 “(A) an administrative review conducted
5 under section 1675(a) of this title has been
6 completed within the prior twelve months or is
7 ongoing at a time thirty days prior to the rel-
8 evant five year deadline or the existing cash de-
9 posit rate for any exporter is 10 percent ad va-
10 lorem or more at a time thirty days prior to the
11 relevant five year deadline; or

12 “(B) a request is made by or on behalf of
13 the domestic industry at least ninety days prior
14 to the five year deadline identified in this sub-
15 section.

16 The five year period will be measured from the date
17 of an antidumping finding or order, a countervailing
18 duty order or a suspension agreement (as modified
19 by subsection (b)(4)) or from the date of the Federal
20 Register notice of the completion of a review under
21 subsection (b)(3) or a review under subsection
22 (b)(1). Notice of the commencement of the review
23 shall be promptly published in the Federal Register.
24 However, where the requirements of (A) or (B) are
25 satisfied, the review shall be deemed initiated on or

1 before the expiry of the five year deadline regardless
2 of whether notice is published prior to such date.

3 “(4) DATES FOR EXISTING ORDERS, FINDINGS
4 OR SUSPENSION AGREEMENTS FOR PURPOSE OF
5 SUBSECTION (b)(3).—All existing antidumping and
6 countervailing duty orders or suspension agreements
7 under this title or antidumping findings under the
8 Antidumping Act of 1921 shall be deemed for pur-
9 poses of subsection (b)(3) to be imposed on the date
10 of entry into force for the United States of the
11 agreement establishing the World Trade Organiza-
12 tion, July 1, 1995.

13 “(5) In conducting reviews under subsections
14 (b) (3) and (4), the administering authority may
15 elect to treat an ongoing review under 1675(a) as a
16 review for purposes of determining whether dumping
17 will likely continue or recur; evidence that dumping
18 has occurred in the ongoing or immediately preced-
19 ing review shall create a presumption that dumping
20 is likely to continue or recur.

21 “(6) For purposes of subsection (b)(4) the
22 Commission:

23 “(A) May consolidate reviews from various
24 countries for the same class or kind and may
25 consolidate related classes or kinds of merchan-

1 dise based on either simultaneous consideration
2 of the product classes in the original injury in-
3 vestigation or on the similarity in domestic in-
4 terested parties.

5 “(B) May commence reviews as early as
6 July 1, 1999, to distribute the administrative
7 burden, and should normally complete reviews
8 within twelve months (except that the counter-
9 vailing duty order, antidumping order, or anti-
10 dumping finding under review may not be re-
11 voked, in whole or in part, prior to July 1,
12 2000).

13 “(i) Where the complexity of the re-
14 view or the number of reviews being con-
15 sidered warrant, the Commission may ex-
16 tend completion of the reviews beyond
17 twelve months to the extent necessary.

18 “(ii) Prior to commencing reviews, the
19 Commission may forward sample question-
20 naire forms and likely information needs to
21 potential interested parties as long as re-
22 sponses to such informational requests are
23 not due prior to the commencement of a
24 review and such requests are not transmit-
25 ted more than twelve months before the

1 likely commencement date. The exercise of
2 this subsection shall not trigger commence-
3 ment of the twelve month time limitation
4 on a review as required by paragraph (B).

5 “(C) Imports of the same class or kind of
6 merchandise from all outstanding antidumping
7 and countervailing duty orders, findings, or sus-
8 pension agreements may be cumulatively as-
9 sessed where cumulative assessment would sup-
10 port a finding of continuation or recurrence of
11 dumping and injury. This section is applicable
12 whether one or more of the findings, orders or
13 suspension agreements involves a regional in-
14 dustry subject to the provisions of (b)(9).

15 “(7) BASIS FOR REVIEWS.—In conducting re-
16 views under subsection (b)(4), such reviews shall not
17 be commenced earlier than July 1, 1999. This para-
18 graph shall not be applied to reviews initiated under
19 paragraph (3)(B).

20 “(8) FACTUAL SITUATIONS.—For purposes of
21 subsection (b), the administering authority and
22 Commission shall, based on the underlying factual
23 information, consider the following factual situations
24 and those consequences that would normally be ex-

1 pected to result from the revocation of an antidump-
2 ing order, or finding, or countervailing duty order—

3 “(A) that dumping or subsidies will con-
4 tinue or recur where dumping or subsidy mar-
5 gins were found in the last completed adminis-
6 trative review or are found in an ongoing review
7 under 1675(a);

8 “(B) that dumping will continue or recur
9 where dumping margins have been eliminated in
10 the last review period when import volumes
11 have also declined;

12 “(C) that subsidies will be reconferred
13 where the subsidy program continues but a par-
14 ticular industry has been excluded from its ben-
15 efits;

16 “(D) that price depression or suppression
17 will continue or recur where dumping or sub-
18 sidy margins continue to be found;

19 “(E) that import volumes will increase
20 where dumping margins continue to be found;

21 “(F) that import volumes will increase
22 where antidumping duty or countervailing duty
23 orders or suspension agreements or safeguard
24 or other import programs will continue in other
25 countries;

1 “(G) that import volumes will increase
2 where unutilized capacity exists or capacity ex-
3 pansions are in progress;

4 “(H) that the like product for purposes of
5 the review will be the same as in the original
6 investigation and will specifically include all
7 products found through scope inquiries or no-
8 tices of clarification to be covered by the find-
9 ing, order or suspension agreement;

10 “(I) that import volumes will increase
11 where offshore inventories, as a ratio to con-
12 sumption within the United States of a like
13 product, are at levels equal to, or grater than,
14 such volumes at the time of the original inves-
15 tigation; and

16 “(J) that import volumes will increase
17 where there is the presence of related parties or
18 distribution systems within the United States.

19 “(9) VERIFICATION.—All information relied on
20 by the administering authority or Commission shall
21 be verified, when considered appropriate, particularly
22 information pertaining to the likely conduct of for-
23 eign producers and, or, importers if an order, find-
24 ing or suspension agreement were to be revoked or
25 terminated.

1 “(10) REGIONAL DOMESTIC INDUSTRIES.—In
2 the case of a countervailing duty or antidumping
3 duty order imposed as a result of an investigation
4 involving a regional domestic industry, the Commis-
5 sion shall determine whether expiration of the order
6 would be likely to lead to continuation or recurrence
7 of material injury or threat of material injury to the
8 regional industry as defined by the Commission in
9 the original investigation, notwithstanding any
10 changes in regional market isolation or regional im-
11 port concentration since the original investigation, or
12 to a different regional industry satisfying the criteria
13 of section 1677(4)(C) of title 19, United States
14 Code, as of the time of the review.

15 “(11) CHANGED CIRCUMSTANCES.—A party
16 previously excluded from an antidumping or counter-
17 vailing duty order, having been determined by the
18 administering authority in its original investigation
19 not to be dumping or countervailably subsidized,
20 may be made subject to that order if later found
21 under this subsection to be dumping or receiving
22 countervailable subsidies above a de minimis level.

23 “(12) STANDARD OF REVIEW.—

24 “(A) The test of whether revocation of an
25 order or finding or the termination of a suspen-

1 sion agreement would be likely to lead to con-
2 tinuation or recurrence of injury is necessarily
3 predictive and shall be satisfied where such an-
4 ticipated injury is not inconsequential, immate-
5 rial or unimportant within the meaning of
6 1677(7)(A). In making this determination the
7 Commission shall take into account the factual
8 situations set forth in subsection (8).

9 “(B) An affirmative determination under
10 this section can be premised upon any one of
11 six independent standards—

12 “(i) whether the expiry of the duty
13 would be likely to lead to continuation of
14 material injury by reason of dumped or
15 subsidized imports;

16 “(ii) whether the expiry of the duty
17 would be likely to lead to continuation of
18 the threat of material injury by reasons of
19 dumped or subsidized imports;

20 “(iii) whether the expiry of the duty
21 would be likely to lead to continuation of
22 material retardation of the establishment
23 of a domestic industry by reason of
24 dumped or subsidized imports;

1 “(iv) whether the expiry of the duty
2 would be likely to lead to recurrence of ma-
3 terial injury by reason of dumped or sub-
4 sidized imports;

5 “(v) whether the expiry of the duty
6 would be likely to lead to recurrence of the
7 threat of material injury by reason of
8 dumped or subsidized imports; and

9 “(vi) whether the expiry of the duty
10 would be likely to lead to recurrence of ma-
11 terial retardation of the establishment of a
12 domestic industry by reason of dumped or
13 subsidized imports.

14 “(c) REVOCATION OF COUNTERVAILING DUTY
15 ORDER, ANTIDUMPING ORDER, OR ANTIDUMPING FIND-
16 ING; TERMINATION OF SUSPENDED INVESTIGATION.—

17 “(1) The administering authority may revoke,
18 in whole or in part, a countervailing duty order,
19 antidumping order or antidumping finding, or termi-
20 nate a suspended investigation, after review under
21 subsection (a) of this section.

22 “(2) The administering authority shall revoke,
23 in whole or in part, an antidumping order or finding
24 or a countervailing duty order or shall terminate a
25 suspended investigation if the Commission deter-

1 mines under subsection (b) that injury would not be
2 likely to continue or recur if the order, finding or
3 suspension agreement were revoked or terminated or
4 where the administering authority determines that
5 dumping or subsidies would not be likely to continue
6 or recur under (b)(3).

7 “(3) Any order, finding or suspended investiga-
8 tion for which a review under subsection (b)(3) has
9 not been commenced within five years of the anni-
10 versary date of the order, finding or suspended in-
11 vestigation, as those dates are modified by (b)(4),
12 shall be revoked or terminated upon publication of
13 a notice from the administering authority in the
14 Federal Register that no review has been or will be
15 conducted under (b)(3).

16 “(4) Any revocation or termination under sub-
17 section (b) shall apply with respect to unliquidated
18 entries of merchandise entered, or withdrawn from
19 warehouse, for consumption on and after the date of
20 publication of the notice of revocation or termination
21 in the Federal Register. Other revocations or termi-
22 nations under section 1675 shall apply with respect
23 to unliquidated entries of merchandise entered, or
24 withdrawn from warehouse, for consumption on and

1 after a date determined by the administering
2 authority.

3 “(d) HEARINGS.—Whenever the administering au-
4 thority or the Commission conducts a review under this
5 section it shall, upon the request of any interested party,
6 hold a hearing in accordance with section 1677c(b) of this
7 title in connection with that review.”.

8 **SEC. 111. CURRENCY CONVERSION.**

9 Section 773(a)(4)(C) of the Tariff Act of 1930, as
10 amended (19 U.S.C. 1677(a)(4)(C)), is amended by in-
11 serting the following new sections:

12 “(D) the effects of fluctuations in ex-
13 change rates where dumping margins otherwise
14 would be created solely by such fluctuations;

15 “(E) the effects of sustained changes in
16 exchange rates for sixty days prior to the time
17 such merchandise is first sold within the mean-
18 ing of paragraph (a)(1) of this section, but only
19 in the context of antidumping investigations
20 pursuant to part II of this title and only where
21 the producer or exporter has changed its prices
22 in order to account for such changes in ex-
23 change rates; or

1 “(F) the purchase of foreign currency on
2 forward markets directly linked to the sale of
3 imported merchandise;”.

4 **SEC. 112. SAMPLING AND AVERAGING.**

5 Section 777A(a) of the Tariff Act of 1930, as amend-
6 ed (19 U.S.C. 1677f-1(a)), is amended by—

7 (1) striking “IN GENERAL.—” from paragraph
8 (a), striking subparagraph (2), and redesignating
9 paragraph (a) as subparagraph (1) and redesignat-
10 ing subparagraph (1) as (A);

11 (2) inserting paragraph “(a) IN GENERAL.—”
12 before the newly designated subparagraph (1);

13 (3) adding at the end of subparagraph (1)(A)
14 the following:

15 “(B) shall decline to take into account ad-
16 justments that amount to less than 1 percent of
17 the unadjusted United States price or
18 unadjusted foreign market price, as appro-
19 priate.”.

20 (4) adding at the end of subparagraph (1) the
21 following new subparagraph:

22 “(2) For the purpose of comparing United
23 States price with foreign market value under Section
24 1675 of this title, the administering authority shall
25 normally compare the United States price of each

1 entry or each sale with a foreign market value based
2 upon weighted average or preponderant prices deter-
3 mined under section 1677b(a) of this title, or upon
4 constructed value.”.

5 (5) adding at the end of paragraph (b) the fol-
6 lowing: “For purposes of investigations under part
7 II of this title, where a significant number of pro-
8 ducers and exporters or a significant number of dif-
9 ferent products are involved, the administering au-
10 thority may sample producers and exporters or prod-
11 ucts, based upon statistically valid sample tech-
12 niques, after seeking and taking account of the views
13 of all interest parties. The administering authority
14 in such cases shall, to the extent practically possible
15 within the time constraints of the investigation or
16 review, determine estimated duty deposits and as-
17 sessment rates for each producer or exporter that so
18 requests and that provides adequate information in
19 a timely manner. Alternatively, the administering
20 authority may determine United States price or for-
21 eign market value upon those sales which account
22 for the largest percentage of the volume of subject
23 imports which can reasonably be investigated (nor-
24 mally 60 percent or more of the total volume of im-
25 ports). However, for good cause shown, upon request

1 of petitioner, the administering authority shall inves-
2 tigate producers and exporters accounting for a
3 higher percentage of the volume of subject im-
4 ports.”.

5 (6) adding at the end of paragraph (b) the fol-
6 lowing new paragraphs:

7 “(c) SPECIAL RULE.—For the purpose of carrying
8 out an investigation under part II of this title, the admin-
9 istering authority shall collect individual transaction prices
10 for United States price and foreign market value (includ-
11 ing information on purchasers, regions, and time period),
12 and shall—

13 “(1) utilize individual transaction prices for the
14 determination of United States price and for com-
15 parison to fair value whenever individual transaction
16 prices are used for the determination of fair value;
17 and

18 “(2) utilize weighted average prices for the de-
19 termination of United States price and for compari-
20 son to fair value whenever weighted average prices
21 are used for the determination of fair value;

22 except that United States price shall be determined for
23 each entry or transaction and compared to a weighted av-
24 erage fair value whenever there is satisfactory evidence
25 that United States prices vary significantly among dif-

1 ferent purchasers, regions, or by time period over 20 per-
2 cent or more of the quantity sold during the period of in-
3 vestigation.

4 “(d) CALCULATION OF ADJUSTMENTS, SPECIAL
5 RULE.—Notwithstanding paragraph (b), the administer-
6 ing authority shall average expenses or income only across
7 those sales to which such expenses or income are attrib-
8 utable for purposes of calculating adjustments to United
9 States price or foreign market value under 1677a and
10 1677b.”.

11 **SEC. 113. MARKET VIABILITY.**

12 (a) Section 773(a)(1)(B) of the Tariff Act of 1930,
13 as amended (19 U.S.C. 1677b(a)(1)(B)), is amended as
14 follows:

15 “(B) if not sold or offered for sale for
16 home consumption, or if the administering au-
17 thority determines that the quantity sold for
18 home consumption is so small in relation to the
19 quantity sold for exportation to the United
20 States as to form an inadequate basis for com-
21 parison, then the price at which so sold or of-
22 fered for sale for exportation to countries other
23 than the United States, provided that the ad-
24 ministering authority does not determine that

1 the foreign market value should be determined
2 on the basis of constructed value.”.

3 (b) Section 773(a)(1) of the Tariff Act of 1930, as
4 amended (19 U.S.C. 1677b(a)(1)) is amended by adding
5 to the end thereof the following: “In determining whether
6 the quantity sold for home consumption is so small in rela-
7 tion to the quantity sold for exportation to the United
8 States to form an adequate basis for comparison, the ad-
9 ministering authority may exclude, in appropriate cir-
10 cumstances, home market sales to related parties (as de-
11 fined in 19 U.S.C. 1677b(e)(4)) or home market sales to
12 companies directly or indirectly owning, controlling or
13 holding with the power to vote, 5 percent or more of the
14 outstanding voting stock or shares of a related party.”

15 (c) Section 773(d) of the Tariff Act of 1930, as
16 amended (19 U.S.C. 1677b(d)), is amended by adding at
17 the end thereof the following: “Sales in the home market
18 will not be used as the basis for comparison when the
19 number of sales is so small in relation to the quantity sold
20 for exportation to the United States as to form an inad-
21 equate basis for comparison. In determining whether the
22 quantity sold for home consumption is so small in relation
23 to the quantity sold for exportation to the United States
24 to form an adequate basis for comparison, the administer-
25 ing authority may exclude, in appropriate circumstances,

1 home market sales to related parties (as defined in 19
2 U.S.C. 1677b(e)(4)) or home market sales to companies
3 directly or indirectly owning, controlling or holding with
4 the power to vote, 5 percent or more of the outstanding
5 voting stock or shares of a related party.”.

6 **SEC. 114. NEGLIGIBLE IMPORTS.**

7 Section 771(7)(C)(v) of the Tariff Act of 1930, as
8 amended (19 U.S.C. 1677(7)(C)(v)), is amended by strik-
9 ing the subparagraph and inserting in lieu thereof the
10 following:

11 “(v) TREATMENT OF NEGLIGIBLE IM-
12 PORTS.—The Commission shall imme-
13 diately terminate its investigation where,
14 during its investigation for purposes of
15 making a preliminary determination, or
16 final determination, pursuant to section
17 1671b of title 19, United State Code, the
18 Commission determines that the volume of
19 imports (or sale for importation) from a
20 particular country of the merchandise
21 which is subject to investigation accounts
22 for less than 3 percent of imports of such
23 merchandise, unless countries which indi-
24 vidually account for less than 3 percent of
25 the imports of such merchandise collec-

1 tively account for more than 7 percent of
2 imports of the merchandise. Notwithstand-
3 ing the foregoing, the Commission shall
4 not terminate its investigation pursuant to
5 this subsection with regard to imports
6 from a particular country where the value
7 of imports or merchandise subject to inves-
8 tigation, based on the actual sales of those
9 imports, from that country during the four
10 most recent quarterly periods for which the
11 Commission has data exceeds an amount
12 which bears the same ratio to \$5,000,000
13 as the average gross national product of
14 the United States for that period, as deter-
15 mined by the Department of Commerce,
16 bears to the average gross national product
17 of the United States for the four quarters
18 of calendar year 1994.

19 “(I) For purposes of this sub-
20 section, the share of imports from a
21 particular country of the merchandise
22 which is subject to investigation shall
23 be assessed during the most recent
24 twelve month period for which the
25 Commission has data.

1 “(II) In cases where the Commis-
2 sion determines circumstances appro-
3 priate to make its determination on
4 the basis of a regional industry, pur-
5 suant to section 1677(4)(C) of title
6 19, United States Code, the percent-
7 age of import volume calculated for
8 purposes of this subsection shall be
9 based upon imports to that region,
10 where practicable.”.

11 **SEC. 115. CAPTIVE PRODUCTION.**

12 Section 771(4) of the Tariff Act of 1930 (19 U.S.C.
13 1677(4)) is amended by adding at the end thereof the fol-
14 lowing new subparagraph:

15 “(F) CAPTIVE PRODUCTION.—In any in-
16 vestigation involving production that domestic
17 producers both sell in the merchant market and
18 further process into another distinct product,
19 the Commission shall not include the semi-fin-
20 ished production within the definition of the fin-
21 ished like product destined for the merchant
22 market, unless the Commission determines both
23 that semi-finished production by the industry
24 competes to a significant degree with all pro-
25 duction of the finished product, and that such

1 semi-finished production competes to a signifi-
2 cant degree with the imports of the finished
3 products subject to investigation.”.

4 **SEC. 116. DUTY AS A COST.**

5 (a) Section 772(e)(2) of the Tariff Act of 1930, as
6 amended (19 U.S.C. 1677a(e)(2)) is amended by striking
7 “and” at the end thereof.

8 (b) Section 772(e) of the Tariff Act of 1930, as
9 amended (19 U.S.C. 1677a(e)), is amended by renumber-
10 ing paragraph (3) as paragraph (4), and inserting the fol-
11 lowing after paragraph (2):

12 “(3) any deposits of estimated antidumping du-
13 ties made with respect to the merchandise, unless—

14 “(A) the administering authority deter-
15 mines that the resulting exporter’s sales price
16 without adjustment for such duties is equal to
17 or greater than the foreign market value of the
18 merchandise, and

19 “(B) the exporter has filed a written cer-
20 tification with the administering authority and
21 the United States Customs Service that—

22 “(i) the transaction price for purposes
23 of subsection (c) of this section included
24 the full amount of the estimated antidump-

1 ing duty deposited with respect to such
2 merchandise, and

3 “(ii) the exporter did not directly or
4 indirectly reimburse or otherwise com-
5 pensate the purchaser for such deposits;
6 and

7 the administering authority is satisfied that the
8 conditions of subsection (A) and (B) have been
9 fulfilled with respect to such merchandise;
10 and”.

11 (c) Section 751(a) of the Tariff Act of 1930, as
12 amended (19 U.S.C. 1675(a)), is amended by adding to
13 the end thereof the following:

14 “(3) SPECIAL RULE.—For purposes of the as-
15 sessments of antidumping duties and the deposits of
16 estimated antidumping duties to be based upon the
17 results of the determination of antidumping duties
18 referred to in subsection (a)(2), where the importer
19 of the merchandise is the exporter as defined in sec-
20 tion 771(13), the determination under subsection
21 (a)(2) shall be deemed to be a determination of
22 nominal antidumping duties in that such duties may
23 be subject to further adjustment to reflect the extent
24 to which the duties are absorbed by the exporter.
25 Therefore, in such instances where the importer is

1 the exporter, the administering authority shall in-
2 struct the United States Customs Service to assess
3 antidumping duties in the amount of the nominal
4 antidumping duties determined, provided that, prior
5 to liquidation, the exporter—

6 “(A) provides written certification that—

7 “(i) the full amount of an assessment
8 on the merchandise based upon the
9 amount of the nominal antidumping duties
10 shall be passed on by the exporter to this
11 unrelated purchaser of the merchandise;
12 and

13 “(ii) the exporter shall not directly or
14 indirectly reimburse or otherwise com-
15 pensate its unrelated purchaser for such
16 assessment; and

17 “(B) within six months following liquida-
18 tion, furnishes affirmative and verifiable evi-
19 dence that such assessment in fact has been
20 passed on to and paid by such purchaser.

21 If the exporter fails to certify and furnish the other
22 evidence indicating that the full amount of nominal
23 antidumping duties is passed on by the exporter to
24 its unrelated purchaser, the assessments of anti-
25 dumping duties shall be based upon the full amount

1 of the nominal antidumping duties plus the amount
2 thereof not shown to be passed on to the unrelated
3 purchaser.”.

4 **TITLE II—INTELLECTUAL PROPERTY**
5 **AMENDMENTS**

6 **SEC. 201. INTERNATIONAL INTELLECTUAL PROPERTY**
7 **PROTECTION OBJECTIVES.**

8 Section 1101(b)(10) of the Omnibus Trade and Com-
9 petitiveness Act of 1988, as amended (19 U.S.C.
10 2901(b)(10)), is amended to provide—

11 “(10) INTELLECTUAL PROPERTY.—The prin-
12 cipal objectives of the United States regarding inter-
13 national intellectual property protection are—

14 “(A) to accelerate the full implementation
15 of parts I, II, and III of the Uruguay Round
16 Agreement on Trade-Related Aspects of Intel-
17 lectual Property Rights;

18 “(B) to seek enactment and effective im-
19 plementation by foreign countries of standards
20 for protection and enforcement of intellectual
21 property rights that supplement and strengthen
22 the standards and obligations contained in the
23 Uruguay Round Agreement on Trade-Related
24 Aspects of Intellectual Property Rights and the

1 North American Free Trade Agreement, includ-
2 ing, but not limited to—

3 “(i) supplementing and strengthening
4 such standards and obligations through bi-
5 lateral and multilateral agreements, in par-
6 ticular, to cover new and emerging tech-
7 nologies, and new methods of transmission,
8 distribution, and uses; and

9 “(ii) eliminating discrimination, un-
10 reasonable exceptions, or preconditions to
11 the protection, enforcement, or commercial
12 enjoyment of the full economic benefits
13 arising from any use or exploitation of in-
14 tellectual property rights;

15 “(C) to secure fair, equitable, and non-dis-
16 criminatory market access opportunities for
17 United States persons holding intellectual prop-
18 erty rights, including rights now, or hereafter,
19 granted by a foreign country to its own nation-
20 als under domestic laws and regulations in re-
21 spect of any use or exploitation of protected
22 works, fixations, or products embodying pro-
23 tected rights;

1 “(D) to take an active role in the develop-
2 ment of the intellectual property regime under
3 the World Trade Organization (WTO);

4 “(E) to take an active role in the World
5 Intellectual Property Organization (WIPO) and
6 ensure that the WIPO and the WTO work to-
7 gether in a mutually supportive fashion; and

8 “(F) to ensure that all international agree-
9 ments entered into by the United States sup-
10 port the high level of protection of intellectual
11 property rights set forth in the Model Intellec-
12 tual Property Agreement established under sec-
13 tion 205 of the GATT Fair Trade Enforcement
14 Act of 1994.

15 In addition, the United States Trade Representative,
16 in consultation with the appropriate United States
17 Government agencies, the relevant congressional
18 committees, and the private sector, shall develop
19 other international intellectual property-related ob-
20 jectives as necessary or appropriate.”.

21 **SEC. 202. FAST TRACK AUTHORITY FOR NEW FREE TRADE**
22 **AGREEMENTS.**

23 (a) Section 1102 of the Omnibus Trade and Competi-
24 tiveness Act of 1988 (19 U.S.C. 2902) is amended by—

1 (1) in paragraph (b)(1), replacing “1993” with
2 “year”;

3 (2) in subsection (b), renumbering paragraph
4 (2) as (3);

5 (3) inserting a new paragraph (b)(2) to pro-
6 vide—

7 “(2) The President may not enter into any ne-
8 gotation of a new free trade agreement with a for-
9 eign country under this paragraph, unless he first
10 determines that such country—

11 “(A) has substantially implemented parts
12 I, II, and III of the Uruguay Round Agreement
13 on Trade-Related Aspects of Intellectual Prop-
14 erty Rights, and

15 “(B) expresses willingness to negotiate an
16 agreement with the United States under which
17 it will provide intellectual property protection
18 equivalent to that set forth in the Model Intel-
19 lectual Property Agreement established under
20 section 205 of the GATT Fair Trade Enforce-
21 ment Act of 1994.”;

22 (4) in paragraph (c)(1), replacing “1993” with
23 “year”;

1 (5) in subsection (c), renumbering paragraphs
2 (2), (3), (4), and (5) as (3), (4), (5), and (6), re-
3 spectively;

4 (6) inserting a new paragraph (c)(2) to pro-
5 vide—

6 “(2) The President may not enter into any ne-
7 gotiation of a new free trade agreement, including a
8 free trade agreement, with a foreign country under
9 this paragraph, unless he first determines that such
10 country—

11 “(A) has fully implemented parts I, II, and
12 III of the Uruguay Round Agreement on
13 Trade-Related Aspects of Intellectual Property
14 Rights, and

15 “(B) expresses willingness to reach an
16 agreement with the United States under which
17 it will provide intellectual property protection
18 equivalent to that set forth in the Model Intel-
19 lectual Property Agreement established under
20 section 205 of the GATT Fair Trade Enforce-
21 ment Act of 1994.”;

22 (7) inserting a new paragraph (c)(7) to pro-
23 vide—

24 “(7) Upon signing any free trade agreement
25 that contains intellectual property-related provisions

1 that supplement and strengthen the standards and
2 obligations contained in already-existing free trade
3 agreements, the President shall seek to bring all
4 United States free trade agreements to this higher
5 level of intellectual property protection, in so far as
6 possible.”; and

7 (8) amending renumbered subparagraph
8 (c)(4)(C)(i) to provide—

9 “(i) provides written notice of such
10 negotiations, including his determination
11 under paragraph (c)(2), to the Committee
12 on Finance of the Senate and the Commit-
13 tee on Ways and Means of the House of
14 Representatives, and”.

15 (b) Section 1103(c) of the Omnibus Trade and Com-
16 petitiveness Act of 1988 (19 U.S.C. 2903(c)) is amended
17 by inserting a new paragraph (3) to provide—

18 “(3) The fast track procedures shall not apply
19 to any implementing bill that contains a provision
20 approving of any trade agreement that is entered
21 into under section 1102(c), if the requirements of
22 section 1102(c)(2) (as renumbered by the Act) are
23 not met.”.

1 **SEC. 203. SPECIAL 301.**

2 Section 182 of the Trade Act of 1974, as amended
3 (19 U.S.C. 2242), is amended by—

4 (1) in paragraph (a)(1)—

5 (A) deleting the word “or” at the end of
6 subparagraph (a)(1)(A);

7 (B) replacing the word “and” at the end of
8 subparagraph (a)(1)(B) with the word “or”,
9 and

10 (C) adding a new subparagraph (a)(1)(C)
11 to provide—

12 “(C) deny non-discriminatory market ac-
13 cess opportunities for United States persons, in-
14 cluding access related to any exploitation or en-
15 joyment of commercial benefits from exercising
16 rights in protected works, fixations, or products
17 embodying protected works, and”;

18 (2) inserting a new paragraph (a)(3) to pro-
19 vide—

20 “(3) In making the identifications required
21 under paragraphs (1) and (2), the Trade Represent-
22 ative shall take into account—

23 “(A) the history of intellectual property
24 laws and practices of foreign countries, includ-
25 ing any past identifications under these para-
26 graphs, and

1 “(B) the history of the efforts of the Unit-
2 ed States, and the responses to the foreign
3 country, to achieve adequate and effective pro-
4 tection of intellectual property rights.”; and

5 (3) amending subsection (d) by—

6 (A) changing the initial paragraph of para-
7 graph d(2) to provide—

8 “(2) A foreign country denies adequate and ef-
9 fective protection of intellectual property rights if
10 the country—

11 “(A) has not fully implemented parts I, II,
12 and III of the Uruguay Round Agreement on
13 Trade-Related Aspects of Intellectual Property
14 Rights, or

15 “(B) denies adequate and effective means
16 under the laws of the foreign country for per-
17 sons who are not citizens or nationals of such
18 foreign country to secure, exercise, enjoy full
19 commercial benefits, and enforce rights relating
20 to patents, process patents, registered trade-
21 marks, copyrights and related rights, trade se-
22 crets, and mask works, notwithstanding that
23 the foreign country may have fully implemented
24 parts I, II, and III of the Uruguay Round
25 Agreement on Trade-Related Aspects of Intel-

1 lectual Property Rights, or the obligations of
2 any other bilateral, regional, or multilateral
3 agreement.”;

4 (B) changing the initial paragraph of para-
5 graph (d)(3) to provide—

6 “(3) A foreign country denies fair and equitable
7 market access if the foreign country effectively de-
8 nies access to a market for a product protected by
9 a copyright or related right, mask work, registered
10 trademark, trade secret, patent, or process patent
11 through the use of laws, procedures, or regulations
12 which—”; and

13 (C) adding a new paragraph (d)(4) to pro-
14 vide—

15 “(4) A foreign country denies non-discrimina-
16 tory market access opportunities for United States
17 persons in respect of establishing business oper-
18 ations or any use, benefit, or exploitation of pro-
19 tected works, fixations, or products embodying pro-
20 tected rights, when it grants access to methods of
21 distribution, collection of revenues generated from
22 the use or fixation of a product embodying protected
23 rights, or any other benefit in relation to such
24 works, fixations, or products embodying protected

1 rights, on terms more advantageous to its own na-
2 tionals than to those nationals of another country.”.

3 **SEC. 204. AMENDMENT OF SECTION 337 OF THE TARIFF ACT**
4 **OF 1930.**

5 (a) Section 337 of the Tariff Act of 1930, as amend-
6 ed (19 U.S.C. 1337), is amended by adding at the end
7 thereof the following new section—

8 **“SEC. 337A. UNFAIR PRACTICES IN DOMESTIC TRADE.**

9 “(a) UNLAWFUL ACTIVITIES; COVERED INDUSTRIES;
10 DEFINITIONS.—

11 “(1) Subject to paragraph (2), the following are
12 unlawful, and when found by the Secretary of Com-
13 merce (hereafter referred to as the Secretary) to
14 exist shall be dealt with, in addition to any other
15 provision of law, as provided in this section:

16 “(A) The sale of articles in the United
17 States by the owner, distributor, or consignee,
18 of articles that—

19 “(i) infringe a valid and enforceable
20 United States patent or a valid and en-
21 forceable United States copyright reg-
22 istered under title 17; or

23 “(ii) are made, produced, processed,
24 or mined under, or by means of, a process

1 covered by the claims of a valid and en-
2 forceable United States patent.

3 “(B) The sale of articles in the United
4 States by the owner, distributor, or consignee,
5 of articles that infringe a valid and enforceable
6 United States trademark registered under the
7 Trademark Act of 1946.

8 “(C) The sale of articles in the United
9 States by the owner, distributor, or consignee,
10 of a semiconductor chip product in a manner
11 that constitutes infringement of a mask work
12 registered under chapter 9 of title 17.

13 “(2) For purposes of this section, the phrase
14 ‘owner, distributor, or consignee’ includes any agent
15 of the owner, distributor, or consignee.

16 “(b) INVESTIGATIONS OF VIOLATIONS BY THE SEC-
17 RETARY OF COMMERCE.—

18 “(1) The Secretary of Commerce shall inves-
19 tigate any alleged violation of this section on com-
20 plaint under oath or upon its initiative, except as
21 provided in subsection (3). Upon commencing any
22 such investigation, the Secretary shall publish notice
23 thereof in the Federal Register. The Secretary shall
24 conclude any such investigation, and make its deter-
25 mination under this section, at the earliest prac-

1 ticable time, but not later than one year (eighteen
2 months in more complicated cases) after the date of
3 publication of notice of such investigation. The Sec-
4 retary shall publish in the Federal Register its rea-
5 sons for designating any investigation as a more
6 complicated investigation. For purposes of the one
7 year and eighteen month period prescribed by this
8 subsection, there shall be excluded any period of
9 time during which such investigation is suspended
10 because of proceedings in a court or agency of the
11 United States involving similar questions concerning
12 the subject matter of such investigations.

13 “(2) During the course of each investigation
14 under this section, the Secretary shall consult with,
15 and seek advice and information from the Depart-
16 ment of Health and Human Services, the Depart-
17 ment of Justice, the Federal Trade Commission, and
18 such other departments and agencies as it considers
19 appropriate.

20 “(3) The Secretary shall not investigate any al-
21 leged violation of this section where the articles sold
22 in the United States have been or are being inves-
23 tigated under section 1337 of this title. If, upon in-
24 vestigation of an alleged violation of this section on
25 complaint or upon its own initiative, the Secretary

1 determines that the articles alleged to violate this
2 section are imported or are sold for importation or
3 are sold after importation by the owner, importer, or
4 consignee, then the investigation by the Secretary
5 shall be terminated and the matter referred to the
6 International Trade Commission under section 1337
7 of this title.

8 “(c) DETERMINATIONS; REVIEW.—The Secretary
9 shall determine, with respect to each investigation con-
10 ducted by it under this section, whether or not there is
11 a violation of this section, except that the Secretary may,
12 by issuing a consent order or on the basis of a settlement
13 agreement, terminate any such investigation, in whole or
14 in part, without making such a determination. Each deter-
15 mination under subsection (c), (d), (e), (f), (g), or (h) of
16 this section shall be made on the record after notice and
17 opportunity for a hearing in conformity with the provi-
18 sions of subchapter II of chapter 5 of title 5. All legal
19 and equitable defenses may be presented in all cases. Any
20 person adversely affected by a final determination of the
21 Secretary under subsection (c), (d), (e), (f), (g), or (h)
22 of this section may appeal such determination, within sixty
23 days after the determination becomes final, to the United
24 States Court of Appeals for the Federal Circuit for review
25 in accordance with chapter 7 of title 5. Notwithstanding

1 the foregoing provisions of this subsection, determination
2 by the Secretary under subsection (c), (d), (e), (f), (g),
3 or (h) of this section with respect to its findings on the
4 public health and welfare, competitive conditions in the
5 United States economy, the production of like or directly
6 competitive articles in the United States and United
7 States consumers, or the appropriate remedy shall be
8 reviewable in accordance with section 706 of title 5.

9 “(d) PRELIMINARY INJUNCTION DURING INVESTIGA-
10 TION; PROCEDURES APPLICABLE.—

11 “(1) If during the course of an investigation
12 under this section, the Secretary determines that
13 there is reason to believe that there is a violation of
14 this section, it may issue a preliminary injunction,
15 enjoining the person from selling like or directly
16 competitive articles in the United States. An Admin-
17 istrative Law Judge shall issue a preliminary injunc-
18 tion directing the person not to sell or offer for sale
19 the like or directly competitive articles in the United
20 States.

21 “(2) A complainant may petition the Secretary
22 for the issuance of a preliminary injunction under
23 this subsection. The Secretary shall make a deter-
24 mination with regard to such petition by no later
25 than the ninetieth day after the date on which the

1 Secretary's notice of investigation is published in the
2 Federal Register. The Secretary may extend the
3 ninety day period for an additional sixty days in a
4 case it designates as a more complicated case. The
5 Secretary shall publish in the Federal Register its
6 reasons why it designated the case as being more
7 complicated. The Secretary may require the com-
8 plainant to post a bond as a prerequisite to the issu-
9 ance of an order under this subsection.

10 “(3) The Secretary may grant preliminary relief
11 under this subsection or subsection (e) of this sec-
12 tion to the same extent as preliminary injunctions
13 and temporary restraining orders may be granted
14 under the Federal Rules of Civil Procedure.

15 “(e) CEASE AND DESIST ORDERS; CIVIL PENALTY
16 FOR VIOLATIONS OF ORDERS.—

17 “(1) The Secretary shall issue and cause to be
18 served on any person violating this section, or be-
19 lieved to be violating this section, as the case may
20 be, an order directing such person to cease and de-
21 sist from engaging in the unfair methods or acts in-
22 volved, unless after considering the effect of such
23 order upon the public health and welfare, competi-
24 tive conditions in the United States economy, the
25 production of like or directly competitive articles in

1 the United States, and United States consumers, if
2 finds that such order should not be issued. The Sec-
3 retary may at any time, upon such notice and in
4 such manner as it deems proper, modify or revoke
5 any such order.

6 “(2) Any persons who violates an order issued
7 by the Secretary under paragraph (1) after it has
8 become final shall forfeit and pay to the United
9 States a civil penalty for each day on which the vio-
10 lation occurs of not more than the greater of
11 \$100,000 or twice the value of the articles sold on
12 such day in violation of the order. Such penalty shall
13 accrue to the United States and may be recovered
14 for the United States in a civil action brought by
15 Commerce in the Federal District Court for the Dis-
16 trict of Columbia or for the district in which the vio-
17 lation occurs. In such actions, the United States dis-
18 trict courts may issue mandatory injunctions incor-
19 porating the relief sought by the Secretary as they
20 deem appropriate in the enforcement of such final
21 orders.

22 “(f) CEASE AND DESIST ORDER; CONDITIONS AND
23 PROCEDURES APPLICABLE.—If—

24 “(1) a complaint is filed against a person under
25 this section;

1 “(2) the complaint and a notice of investigation
2 are served on the person;

3 “(3) the person fails to respond to the com-
4 plaint and notice or otherwise fails to appear to an-
5 swer the complaint and notice;

6 “(4) the person fails to show good cause why
7 the person should not be found in default; and

8 “(5) the complainant seeks relief limited solely
9 to that person;

10 the Secretary shall presume the facts alleged in the
11 complaint to be true and shall, upon request, issue
12 a preliminary injunction or a cease and desist order,
13 or both, limited to that person unless, after consider-
14 ing the effect of such exclusion or order upon the
15 public health and welfare, competitive conditions in
16 the United States economy, and the United States
17 consumers, the Secretary finds that such exclusion
18 or order should not be issued.

19 “(g) SANCTIONS FOR ABUSE OF DISCOVERY AND
20 ABUSE OF PROCESS.—The Secretary may by rule pre-
21 scribe sanctions for abuse of discovery and abuse of proc-
22 ess to the extent authorized by rule 11 and rule 37 of
23 the Federal Rules of Civil Procedure.

24 “(h) FORFEITURE.—

1 “(1) In addition to taking action under sub-
2 section (e) or (f) of this section, the Secretary may
3 issue an order providing that any article sold in the
4 United States or offered for sale in violation of the
5 provisions of this section be seized and forfeited to
6 the United States if—

7 “(A) the owner, distributor, or consignee
8 of the article previously attempted to sell the
9 article in the United States; and

10 “(B) the Secretary provide the owner, dis-
11 tributor, or consignee of the articles written no-
12 tice of—

13 “(i) such order, and

14 “(ii) the seizure and forfeiture that
15 would result from any further violations of
16 the order.

17 “(2) Any forfeiture order issued by the Sec-
18 retary under paragraph (1) may be enforced for the
19 United States in a civil action brought by Commerce
20 in the Federal District Court for the District of Co-
21 lumbia or for the district in which the violation oc-
22 curs. In such actions, the United States district
23 courts may issue mandatory injunctions incorporat-
24 ing the relief sought by the Secretary as they deem
25 appropriate in the enforcement of such orders.

1 “(i) REFERRAL TO PRESIDENT.—

2 “(1) If the Secretary determines that there is a
3 violation of this section, or that, for purposes of sub-
4 section (d), (e), (f), (g), or (h) of this section, there
5 is reason to believe that there is such a violation, if
6 shall—

7 “(A) published such determination in the
8 Federal Register, and

9 “(B) transmit to the President a copy of
10 such determination and the action taken under
11 subsection (d), (e), (f), (g), or (h) of this sec-
12 tion, with respect thereto, together with the
13 record upon which such determination is based.

14 “(2) If, before, the close of the sixty day period
15 beginning on the day after the day on which he re-
16 ceives a copy of such determination, the President,
17 for policy reasons, disapproves such determination
18 and notifies the Secretary of his disapproval, the, ef-
19 fective on the date of such notice, such determina-
20 tion and the action taken under subsections (d), (e),
21 (f), (g), or (h) of this section with respect thereto
22 shall have no force or effect.

23 “(3) Subject to the provisions of paragraph (2),
24 such determination shall be effective upon publica-
25 tion thereof in the Federal Register.

1 “(4) The President does not disapprove such
2 determination within such sixty day period, or if he
3 notifies the Secretary before the close of such period
4 that he approves such determination, then, for pur-
5 poses of paragraph (3) and subsection (d) of this
6 section such determination shall become final on the
7 day after the close of such period on the day on
8 which the President notifies the Secretary of his ap-
9 proval, as the case may be.

10 “(j) PERIOD OF EFFECTIVENESS.—

11 “(1) Any enforcement provisions invoked, in-
12 cluding cease and desist orders pursuant to sub-
13 section (e) or (f), shall continue in effect until the
14 Secretary finds the conditions which lead to such
15 findings no longer exist.

16 “(2) If any persons or company who has pre-
17 viously been found by the Secretary to be in viola-
18 tion of this section petitions the Secretary for a de-
19 termination that the petitioner is no longer in viola-
20 tion of this section or for a modification or rescission
21 of an order—

22 “(A) the burden of proof in any proceeding
23 before the Secretary regarding such petition
24 shall be on the petitioner; and

1 “(B) relief may be granted by the Sec-
2 retary with respect to such petition—

3 “(i) on the basis of new evidence or
4 evidence that could not have been pre-
5 sented at the prior proceeding, or

6 “(ii) on grounds which would permit
7 relief from a judgment or order under the
8 Federal Rules of Civil Procedure.

9 “(k) DEFINITION OF UNITED STATES.—For pur-
10 poses of this section and sections 1338 and 1340 of this
11 title, the term ‘United States’ means the customs territory
12 of the United States as defined in general note 2 of the
13 Harmonized Tariff Schedule of the United States.

14 “(l) DISCLOSURE OF CONFIDENTIAL INFORMA-
15 TION.—

16 “(1) Information submitted to the Secretary or
17 exchanged among the parties in connection with pro-
18 ceedings under this section which is properly des-
19 ignated as confidential pursuant to rules promul-
20 gated by the Secretary may not be disclosed (except
21 under a protective order issued under regulation
22 which authorizes limited disclosure of such informa-
23 tion) to any person (other than a person described
24 in paragraph (2)) without the consent of the person
25 submitting it.

1 “(2) Notwithstanding the prohibition contained
2 in paragraph (1), information referred to in that
3 paragraph may be disclosed to—

4 “(A) an officer or employee of the Depart-
5 ment of Commerce who is directly concerned
6 with carrying out the investigation in connec-
7 tion with which the information is submitted, or

8 “(B) an officer or employee of the United
9 States Government who is directly involved in
10 the review under subsection (i) of this section.”.

11 **SEC. 205. GENERALIZED SYSTEM OF PREFERENCES.**

12 Section 502 of the Trade Act of 1974, as amended
13 (19 U.S.C. 2462), is amended by—

14 (1) redesignating subsections (c), (d), and (e)
15 as (d), (e), and (f), respectively; and

16 (2) inserting a new subsection (c) to provide—

17 “(c)(1) Effective one year after the entry into force
18 of the Uruguay Round Agreement establishing the World
19 Trade Organization, the President shall not designate any
20 country a beneficiary developing country under this sec-
21 tion if such country has not fully implemented parts I,
22 II, and III of the Uruguay Round Agreement on Trade-
23 Related Aspects of Intellectual Property Rights.

1 “(2) If a country is a least developed country, the
2 President may designate such country a beneficiary devel-
3 oping country for four additional years.

4 “(3) If the President certifies to Congress that a non
5 least developed country is making timely, overall, and sig-
6 nificant progress toward full implementation of parts I,
7 II, and III of the Uruguay Round Agreement on Trade-
8 Related Aspects of Intellectual Property Rights, the Presi-
9 dent may designate such country a beneficiary developing
10 country for one additional year.”;

11 (3) deleting redesignated paragraph (d)(5), and
12 renumbering redesignated paragraphs (d)(6) and
13 (d)(7) as paragraphs (d)(5) and (d)(6), respectively;
14 and

15 (4) adding a new subsection (g) to provide—
16 “(g) The President shall review annually whether
17 each country that has been designated under this section
18 as a beneficiary developing country, and has fully imple-
19 mented parts I, II, and III of the Uruguay Round Agree-
20 ment on Trade-Related Aspects of Intellectual Property
21 Rights, continues to fully implement that agreement.”.

22 **SEC. 206. MODEL INTELLECTUAL PROPERTY AGREEMENT.**

23 (a) The United States Trade Representative, in con-
24 sultation with other appropriate United States Govern-
25 ment agencies and the private sector, shall maintain a

1 Model Intellectual Property Agreement embodying provi-
2 sions for intellectual property protection that supplement
3 and strengthen the standards and obligations contained
4 in the Uruguay Round Agreement on Trade-Related As-
5 pects of Intellectual Property Rights and the North Amer-
6 ican Free Trade Agreement.

7 (b) In all international negotiations involving intellec-
8 tual property protection, the Model Intellectual Property
9 Agreement shall represent United States negotiating ob-
10 jectives.

11 (c) The United States Trade Representative, in con-
12 sultation with other appropriate United States govern-
13 ment agencies and the private sector, shall review periodi-
14 cally the Model Intellectual property Agreement to ensure
15 that it reflects new and emerging developments in intellec-
16 tual property protection and new and emerging tech-
17 nologies.

18 **SEC. 207. EFFORTS BY UNITED STATES DIPLOMATS.**

19 The Secretary of State shall instruct all heads of
20 United States diplomatic missions abroad to include intel-
21 lectual property protection as a priority objective of the
22 mission.

1 **SEC. 208. PRIVATE SECTOR INVOLVEMENT IN INTER-**
2 **NATIONAL DISPUTE SETTLEMENT.**

3 The United States Trade Representative shall de-
4 velop and maintain a procedure to ensure the exchange
5 of information between interested United States private
6 sector representatives and the United States Trade Rep-
7 resentative in preparation for international intellectual
8 property-related dispute settlement proceedings to which
9 the United States is a party.

10 **SEC. 209. INCENTIVES TO IMPROVE FOREIGN INTELLEC-**
11 **TUAL PROPERTY PROTECTION.**

12 (a) Notwithstanding any other provision of United
13 States law, the President is authorized to undertake the
14 following actions, where appropriate, with respect to devel-
15 oping countries to encourage and help those countries to
16 improve their protection of intellectual property—

17 (1) provide Overseas Private Investment Cor-
18 poration insurance for intellectual property assets;

19 (2) require United States foreign assistance
20 programs to provide support for development of na-
21 tional intellectual property laws and regulations, as
22 well as for development of the infrastructure nec-
23 essary for protection of intellectual property;

24 (3) establish technical cooperation committees
25 on intellectual property standards within regional or-

1 organizations, such as the Sai Pacific Economic Co-
2 operation group; and

3 (4) establish, as a joint effort between the
4 United States government and the United States
5 private sector, a council to facilitate and provide in-
6 tellectual property-related technical assistance,
7 through the United States Agency for International
8 Development.

9 (b) Notwithstanding any other provision of United
10 States law, the President is authorized, where appropriate,
11 to require United States representatives to multilateral
12 lending institutions to seek establishment of programs
13 within these institutions to support strong intellectual
14 property protection in recipient countries that have fully
15 implemented parts I, II, and III of the Uruguay Round
16 Agreement on Trade-Related Aspects of Intellectual Prop-
17 erty Rights.

18 **SEC. 210. INTELLECTUAL PROPERTY RIGHTS BORDER EN-**
19 **FORCEMENT MAINTENANCE.**

20 (a) The prima facie requirements of articles 51–60
21 of the Uruguay Round Agreement on Trade-Related As-
22 pects of Intellectual Property regarding Border Measures
23 shall not unduly burden current intellectual property
24 rights owners and shall not be implemented in any way
25 to decrease the level of protection presently available.

1 (b) The United States Trade Representative should
2 seek to negotiate through bilateral and multilateral agree-
3 ments, the earliest possible full implementation of the bor-
4 der enforcement provisions against the importations of in-
5 fringing goods enumerated in parts I, II, and III of the
6 Uruguay Round Agreement on Trade-Related Aspects of
7 Intellectual Property Rights, and if warranted, require of
8 foreign trading partners which chronically violate Intellec-
9 tual Property Rights, the establishment of an export con-
10 trol monitoring system. The decision to include an export
11 monitoring requirement is to be made by the United
12 States Trade Representative and should be based upon
13 evidence which includes, but is not limited to—

14 (1) United States customs Service seizure sta-
15 tistics demonstrating that sufficient numbers of
16 shipments were sized for Intellectual Property
17 Rights violations to indicate that an export problem
18 exists; and

19 (2) evidence provided by Intellectual Property
20 Rights owners demonstrating that the export of in-
21 fringing goods is a significant threat to the market-
22 ing, distribution or sale of authorized merchandise.

1 **TITLE III—MARKET OPENING MEASURES**

2 **SEC. 301. ACTION BY THE PRESIDENT TO OPEN FOREIGN**
3 **MARKETS.**

4 (a) A new section 311 of the Trade Act of 1974 is
5 created as follows:

6 **“SEC. 311. ACTION BY THE PRESIDENT TO OPEN FOREIGN**
7 **MARKETS.**

8 “(a) The President shall have the authority to impose
9 civil penalties on foreign or domestic persons that engage
10 in restrictive business practices, including price-fixing,
11 bid-rigging, joint restraint of output, market allocation,
12 boycotts, tying arrangements, or similar activities, when
13 such practices foreclose United States exports or otherwise
14 burden or restrict United States foreign commerce.

15 “(b) The President in consultations with the United
16 States Trade Representative, may initiate an investigation
17 to determine whether action is appropriate under para-
18 graph (a) upon the filing of a petition by an interested
19 party or on the President’s own motion.

20 “(c) During the course of an investigation initiated
21 under paragraph (b), the President may require the post-
22 ing of bond or cash deposits, or take other provisional
23 measures, to secure the full cooperation of the parties to
24 the investigation.

1 “(d) The President may negotiate settlement agree-
2 ments with the parties to an investigation or their govern-
3 ment under paragraph (b) which result in the elimi-
4 nation—

5 “(1) of the practice under investigation; or

6 “(2) of the restriction on United States exports
7 or other burden or restriction on United States com-
8 merce.

9 “(e) Civil penalties imposed by the President pursu-
10 ant to this section shall be levied against the United States
11 business operations of foreign or domestic persons found
12 to have engaged in restrictive business practices under this
13 section and shall be commensurate with the degree of fi-
14 nancial injury arising out of the foreclosure of United
15 States exports or other burden or restriction on United
16 States commerce.

17 “(f) The president shall prescribe by Executive Order
18 appropriate rules and procedures of implementing this sec-
19 tion.

20 “(g) The President shall negotiate bilateral and mul-
21 tilateral agreements to secure the elimination of restrictive
22 business practices in international commerce which have
23 the effect of foreclosing United States exports or otherwise
24 burdening or restricting United States commerce.”.

1 **SEC. 302. AMENDMENTS TO SECTION 301.**

2 (a) Section 301 of the Trade Act of 1974, as amend-
3 ed (19 U.S.C. 2411), is amended by—

4 (1) in paragraph (a)(1), deleting the phrase
5 “within the power of the President” and replacing it
6 with the phrase “notwithstanding and other provi-
7 sion of United States law”;

8 (2) in paragraph (b)(2), deleting phrase “within
9 the power of the President” and replacing it with
10 the phrase “notwithstanding any other provision of
11 United States Law”;

12 (3) in subsection (c),

13 (A) deleting paragraph (5),

14 (B) renumbering paragraph (3) and (4) as
15 (4) and (5), respectively,

16 (C) inserting a new paragraph (3) to pro-
17 vide—

18 “(3) For purposes of carrying out the provi-
19 sions of subsection (a) or (b), the President is au-
20 thorized, notwithstanding any other provision of
21 United States law, to take actions with respect to
22 any area pertinent to relations with the foreign
23 country that is the target of the action, including
24 but not limited to, trade in any goods or services.”,

1 (D) in renumbered paragraph (4), replac-
2 ing “Trade Representative” with “President or
3 the Trade Representative”, and

4 (E) in paragraph (6), replacing “Trade
5 Representative” with “President or the Trade
6 Representative”; and

7 (4) in subsection (d), amending clause
8 (d)(3)(B)(i)(II) to provide—

9 “(II) provision of adequate and effec-
10 tive protection of intellectual property
11 rights, notwithstanding that the country
12 may have fully implemented parts I, II,
13 and III of the Uruguay Round Agreement
14 on Trade-Related Intellectual Property
15 Rights or the obligations of any other bi-
16 lateral, regional, or multilateral agreement,
17 or”.

18 (b) Section 302(a)(2) of the Trade Act of 1974, as
19 amended (19 U.S.C. 2412(a)(2)), is amended by adding
20 a second sentence to provide: “If the petition alleges that
21 a foreign country fails to provide adequate and effective
22 protection of intellectual property rights, alleges the ele-
23 ments necessary for action under section 301(a) or (b),
24 and provides information reasonably available to the peti-

1 tioner in support of such allegations, the Trade Represent-
2 ative shall initiate an investigation.”.

3 **SEC. 303. SPECIALTY STEEL PRODUCT TARIFFS.**

4 It is the sense of Congress that every effort be taken
5 by the United States Government to conclude the Multilat-
6 eral Steel Agreement prior to the effective date of the leg-
7 islation enacted to implement the Uruguay Round of the
8 General Agreement on Tariffs and Trade. A principal ne-
9 gotiating objective of the United States in the Multilateral
10 Steel Agreement, with respect to unfair trade practices,
11 shall be to obtain rules ensuring the elimination of all inju-
12 rious subsidies. In this regard, prior to implementation of
13 the Uruguay Round of the General Agreement on Tariffs
14 and Trade consideration shall be given by United States
15 negotiators to the potential impact the elimination of tar-
16 iffs on specialty steel products would have on the specialty
17 steel industry absent a successful conclusion of the MSA.
18 The term “specialty steel product” shall be defined as any
19 product classified under the following item numbers of the
20 Harmonized Tariff Schedules of United States: 7218-
21 7223, 7224.10.0045, 7224.90.0015-7224.90.0035,
22 7225.10-7225.20, 7225.30.10, 7225.30.50, 7225.40.10,
23 7225.40.50, 7225.50.10, 7226.10-7226.20, 7226.91.05-
24 7226.91.25, 7226.92.10-7226.92.30, 7227.10,
25 7227.90.10-7227.90.20, 7228.10, 7228.30.20-

- 1 7228.30.60, 7228.50.10, 7228.60.10, 7229.10, 7304.41–
- 2 7304.49, and 7306.40.

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