

Union Calendar No. 462

103^D CONGRESS
2^D SESSION

H. R. 5110

[Report No. 103-826, Parts I and II]

A BILL

To approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations.

OCTOBER 3, 1994

Committees on Agriculture, Education and Labor; Foreign Affairs, Government Operations, the Judiciary, and Rules discharged; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 1994

Mr. GEPHARDT (for himself and Mr. MICHEL) (by request) introduced the following bill; which was referred jointly to the following Committees for a period ending not later than October 3, 1994: Ways and Means, Agriculture, Education and Labor, Energy and Commerce, Foreign Affairs, Government Operations, the Judiciary, and Rules

OCTOBER 3, 1994

Reported from the Committee on Ways and Means

OCTOBER 3, 1994

Reported from the Committee on Energy and Commerce

OCTOBER 3, 1994

Additional sponsors: Mr. GIBBONS, Mr. MATSUI, Mrs. KENNELLY, Mr. LEVIN, and Mr. BACCHUS of Florida

OCTOBER 3, 1994

Committees on Agriculture, Education and Labor, Foreign Affairs, Government Operations, the Judiciary, and Rules discharged; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

A BILL

To approve and implement the trade agreements concluded
in the Uruguay Round of multilateral trade negotiations.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Uruguay Round Agreements Act”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING
TO, THE URUGUAY ROUND AGREEMENTS

Subtitle A—Approval of Agreements and Related Provisions

Sec. 101. Approval and entry into force of the Uruguay Round Agreements.

Sec. 102. Relationship of the agreements to United States law and State law.

Sec. 103. Implementing actions in anticipation of entry into force; regulations.

Subtitle B—Tariff Modifications

Sec. 111. Tariff modifications.

Sec. 112. Implementation of Schedule XX provisions on ship repairs.

Sec. 113. Liquidation or reliquidation and refund of duty paid on certain en-
tries.

Sec. 114. Modifications to the HTS.

Sec. 115. Consultation and layover requirements for, and effective date of, pro-
claimed actions.

Sec. 116. Effective date.

Subtitle C—Uruguay Round Implementation and Dispute Settlement

Sec. 121. Definitions.

Sec. 122. Implementation of Uruguay Round Agreements.

Sec. 123. Dispute settlement panels and procedures.

Sec. 124. Annual report on the WTO.

Sec. 125. Review of participation in the WTO.

Sec. 126. Increased transparency.

Sec. 127. Access to the WTO dispute settlement process.

Sec. 128. Advisory committee participation.

Sec. 129. Administrative action following WTO panel reports.

Sec. 130. Effective date.

Subtitle D—Related Provisions

- Sec. 131. Working party on worker rights.
- Sec. 132. Implementation of rules of origin work program.
- Sec. 133. Membership in WTO of boycotting countries.
- Sec. 134. Africa trade and development policy.
- Sec. 135. Objectives for extended negotiations.
- Sec. 136. Repeal of tax on imported perfumes; drawback of tax on distilled spirits used in perfume manufacture.
- Sec. 137. Certain nonrubber footwear.
- Sec. 138. Effective date.

TITLE II—ANTIDUMPING AND COUNTERVAILING DUTY PROVISIONS

- Sec. 201. Reference.

Subtitle A—General Provisions

- Sec. 211. Action with respect to petitions.
- Sec. 212. Petition and preliminary determination.
- Sec. 213. De minimis dumping margin.
- Sec. 214. Critical circumstances.
- Sec. 215. Provisional measures.
- Sec. 216. Conditions on acceptance of suspension agreements.
- Sec. 217. Termination of investigation.
- Sec. 218. Special rules for regional industries.
- Sec. 219. Determination of weighted average dumping margin.
- Sec. 220. Review of determinations.
- Sec. 221. Review determinations.
- Sec. 222. Definitions.
- Sec. 223. Export price and constructed export price.
- Sec. 224. Normal value.
- Sec. 225. Currency conversion.
- Sec. 226. Proprietary and nonproprietary information.
- Sec. 227. Opportunity for comment by consumers and industrial users.
- Sec. 228. Public notice and explanation of determinations.
- Sec. 229. Sampling and averaging; determination of weighted average dumping margin.
- Sec. 230. Anticircumvention.
- Sec. 231. Evidence.
- Sec. 232. Antidumping petitions by third countries.
- Sec. 233. Conforming amendments.
- Sec. 234. Application to Canada and Mexico.

Subtitle B—Subsidies Provisions

PART 1—COUNTERAVAILABLE SUBSIDIES

- Sec. 251. Countervailable subsidy.

PART 2—REPEAL OF SECTION 303 AND CONFORMING AMENDMENTS

- Sec. 261. Repeal of section 303.
- Sec. 262. Imposition of countervailing duties.
- Sec. 263. De minimis countervailable subsidy.
- Sec. 264. Determination of countervailable subsidy rate.
- Sec. 265. Assessment of countervailing duty.
- Sec. 266. Nature of countervailable subsidy.

- Sec. 267. Definition of developing and least-developed country.
- Sec. 268. Upstream subsidies.
- Sec. 269. Determination of countervailable subsidy rate.
- Sec. 270. Conforming amendments.

PART 3—SECTION 303 INJURY INVESTIGATIONS

- Sec. 271. Special rules for injury investigations for certain section 303 countervailing duty orders and investigations.

PART 4—ENFORCEMENT OF UNITED STATES RIGHTS UNDER THE
SUBSIDIES AGREEMENT

- Sec. 281. Subsidies enforcement.
- Sec. 282. Review of subsidies agreement.
- Sec. 283. Amendments to title VII of the Tariff Act of 1930.

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- Sec. 291. Effective date.

TITLE III—ADDITIONAL IMPLEMENTATION OF AGREEMENTS

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- Sec. 301. Investigations, determinations, and recommendations by International Trade Commission.
- Sec. 302. Action by President after determination of import injury.
- Sec. 303. Miscellaneous amendments.
- Sec. 304. Effective date.

Subtitle B—Foreign Trade Barriers and Unfair Trade Practices

- Sec. 311. Identification of foreign anticompetitive practices.
- Sec. 312. Consultation with committees.
- Sec. 313. Identification of countries that deny protection of intellectual property rights.
- Sec. 314. Amendments to title III of the Trade Act of 1974.
- Sec. 315. Objectives in intellectual property.
- Sec. 316. Effective date.

Subtitle C—Unfair Practices in Import Trade

- Sec. 321. Unfair practices in import trade.
- Sec. 322. Effective date.

Subtitle D—Textiles

- Sec. 331. Textile product integration.
- Sec. 332. Amendment to section 204 of the Agricultural Act of 1956.
- Sec. 333. Textile transshipments.
- Sec. 334. Rules of origin for textile and apparel products.
- Sec. 335. Effective date.

Subtitle E—Government Procurement

- Sec. 341. Monitoring and enforcement of the agreement on government procurement.
- Sec. 342. Conforming amendments.

- Sec. 343. Reciprocal competitive procurement practices.
- Sec. 344. Effective date.

Subtitle F—Technical Barriers to Trade

- Sec. 351. Technical barriers to trade.
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TITLE IV—AGRICULTURE-RELATED PROVISIONS

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- Sec. 421. Authority for certain actions under Article XXVIII.
- Sec. 422. Tobacco imports.
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- Sec. 424. Report to Congress on access to Canadian dairy and poultry markets.
- Sec. 425. Study of milk marketing order system.
- Sec. 426. Additional program funding.

Subtitle B—Sanitary and Phytosanitary Measures

- Sec. 431. Sanitary and phytosanitary measures.
- Sec. 432. International standard-setting activities.

Subtitle C—Standards

- Sec. 441. The Federal Seed Act.

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- Sec. 451. General effective date.

TITLE V—INTELLECTUAL PROPERTY

- Sec. 501. Definition.

Subtitle A—Copyright Provisions

- Sec. 511. Rental rights in computer programs.
- Sec. 512. Civil penalties for unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances.
- Sec. 513. Criminal penalties for unauthorized fixation of and trafficking in sound recordings and music videos or live musical performances.
- Sec. 514. Restored works.

Subtitle B—Trademark Provisions

- Sec. 521. Definition of “abandoned”.
- Sec. 522. Nonregistrability of misleading geographic indications for wines and spirits.
- Sec. 523. Effective date.

Subtitle C—Patent Provisions

- Sec. 531. Treatment of inventive activity.
- Sec. 532. Patent term and internal priority.
- Sec. 533. Patent rights.
- Sec. 534. Effective dates and application.

TITLE VI—RELATED PROVISIONS

Subtitle A—Expiring Provisions

- Sec. 601. Generalized System of Preferences.
- Sec. 602. U.S. insular possessions.

Subtitle B—Certain Customs Provisions

- Sec. 611. Reimbursements from customs user fee account.
- Sec. 612. Merchandise processing fees.

Subtitle C—Conforming Amendments

- Sec. 621. Conforming amendments.

TITLE VII—REVENUE PROVISIONS

- Sec. 700. Amendment of 1986 Code and table of contents.

Subtitle A—Withholding Tax Provisions

- Sec. 701. Withholding on distributions of Indian casino profits to tribal members.
- Sec. 702. Voluntary withholding on certain Federal payments and on unemployment compensation.

Subtitle B—Provisions Relating to Estimated Taxes and Payments and Deposits of Taxes

- Sec. 711. Treatment of subpart F and section 936 income of taxpayers using annualized method for estimated tax.
- Sec. 712. Time for payments and deposits of certain taxes.
- Sec. 713. Reduction in rate of interest paid on certain corporate overpayments.

Subtitle C—Earned Income Tax Credit

- Sec. 721. Extension of earned income tax credit to military personnel stationed outside the United States.
- Sec. 722. Certain nonresident aliens ineligible for earned income tax credit.
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Subtitle D—Provisions Relating To Retirement Benefits

- Sec. 731. Treatment of excess pension assets used for retiree health benefits.

- Sec. 732. Rounding rules for cost-of-living adjustments.
- Sec. 733. Increase in inclusion of social security benefits paid to nonresidents.

Subtitle E—Other Provisions

- Sec. 741. Partnership distributions of marketable securities.
- Sec. 742. Taxpayer identification numbers required at birth.
- Sec. 743. Extension of Internal Revenue Service user fees.
- Sec. 744. Modification of substantial understatement penalty for corporations participating in tax shelters.
- Sec. 745. Modification of authority to set terms and conditions for savings bonds.

Subtitle F—Pension Plan Funding and Premiums

- Sec. 750. Short title.

PART I—PENSION PLAN FUNDING

SUBPART A—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

- Sec. 751. Minimum funding requirements.
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- Sec. 753. Anticipation of bargained benefit increases.
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- Sec. 761. Minimum funding requirements.
- Sec. 762. Limitation on changes in current liability assumptions.
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- Sec. 766. Prohibition on benefit increases where plan sponsor is in bankruptcy.
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PART II—AMENDMENTS RELATED TO TITLE IV OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

- Sec. 771. Reportable events.
- Sec. 772. Certain information required to be furnished to PBGC.
- Sec. 773. Enforcement of minimum funding requirements.
- Sec. 774. Computation of additional PBGC premium.
- Sec. 775. Disclosure to participants.
- Sec. 776. Missing participants.
- Sec. 777. Modification of maximum guarantee for disability benefits.
- Sec. 778. Procedures to facilitate distribution of termination benefits.

PART III—EFFECTIVE DATES

- Sec. 781. Effective dates.

TITLE VIII—PIONEER PREFERENCES

Sec. 801. Pioneer preferences.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) GATT 1947; GATT 1994.—

4 (A) GATT 1947.—The term “GATT 1947”
5 means the General Agreement on Tariffs and
6 Trade, dated October 30, 1947, annexed to the
7 Final Act Adopted at the Conclusion of the Sec-
8 ond Session of the Preparatory Committee of
9 the United Nations Conference on Trade and
10 Employment, as subsequently rectified, amend-
11 ed, or modified by the terms of legal instru-
12 ments which have entered into force before the
13 date of entry into force of the WTO Agreement.

14 (B) GATT 1994.—The term “GATT 1994”
15 means the General Agreement on Tariffs and
16 Trade annexed to the WTO Agreement.

17 (2) HTS.—The term “HTS” means the Har-
18 monized Tariff Schedule of the United States.

19 (3) INTERNATIONAL TRADE COMMISSION.—The
20 term “International Trade Commission” means the
21 United States International Trade Commission.

22 (4) MULTILATERAL TRADE AGREEMENT.—The
23 term “multilateral trade agreement” means an
24 agreement described in section 101(d) of this Act

1 (other than an agreement described in paragraph
2 (17) or (18) of such section).

3 (5) SCHEDULE XX.—The term “Schedule XX”
4 means Schedule XX—United States of America an-
5 nexed to the Marrakesh Protocol to the GATT 1994.

6 (6) TRADE REPRESENTATIVE.—The term
7 “Trade Representative” means the United States
8 Trade Representative.

9 (7) URUGUAY ROUND AGREEMENTS.—The term
10 “Uruguay Round Agreements” means the agree-
11 ments approved by the Congress under section
12 101(a)(1).

13 (8) WORLD TRADE ORGANIZATION AND WTO.—
14 The terms “World Trade Organization” and
15 “WTO” mean the organization established pursuant
16 to the WTO Agreement.

17 (9) WTO AGREEMENT.—The term “WTO
18 Agreement” means the Agreement Establishing the
19 World Trade Organization entered into on April 15,
20 1994.

21 (10) WTO MEMBER AND WTO MEMBER COUN-
22 TRY.—The terms “WTO member” and “WTO mem-
23 ber country” mean a state, or separate customs ter-
24 ritory (within the meaning of Article XII of the

1 WTO Agreement), with respect to which the United
2 States applies the WTO Agreement.

3 **TITLE I—APPROVAL OF, AND**
4 **GENERAL PROVISIONS RE-**
5 **LATING TO, THE URUGUAY**
6 **ROUND AGREEMENTS**

7 **Subtitle A—Approval of Agree-**
8 **ments and Related Provisions**

9 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE URU-**
10 **GUAY ROUND AGREEMENTS.**

11 (a) APPROVAL OF AGREEMENTS AND STATEMENT OF
12 ADMINISTRATIVE ACTION.—Pursuant to section 1103 of
13 the Omnibus Trade and Competitiveness Act of 1988 (19
14 U.S.C. 2903) and section 151 of the Trade Act of 1974
15 (19 U.S.C. 2191), the Congress approves—

16 (1) the trade agreements described in sub-
17 section (d) resulting from the Uruguay Round of
18 multilateral trade negotiations under the auspices of
19 the General Agreement on Tariffs and Trade, en-
20 tered into on April 15, 1994, and submitted to the
21 Congress on September 27, 1994; and

22 (2) the statement of administrative action pro-
23 posed to implement the agreements that was submit-
24 ted to the Congress on September 27, 1994.

1 (b) ENTRY INTO FORCE.—At such time as the Presi-
2 dent determines that a sufficient number of foreign coun-
3 tries are accepting the obligations of the Uruguay Round
4 Agreements, in accordance with article XIV of the WTO
5 Agreement, to ensure the effective operation of, and ade-
6 quate benefits for the United States under, those Agree-
7 ments, the President may accept the Uruguay Round
8 Agreements and implement article VIII of the WTO
9 Agreement.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated annually such sums as
12 may be necessary for the payment by the United States
13 of its share of the expenses of the WTO.

14 (d) TRADE AGREEMENTS TO WHICH THIS ACT AP-
15 PLIES.—Subsection (a) applies to the WTO Agreement
16 and to the following agreements annexed to that Agree-
17 ment:

18 (1) The General Agreement on Tariffs and
19 Trade 1994.

20 (2) The Agreement on Agriculture.

21 (3) The Agreement on the Application of Sani-
22 tary and Phytosanitary Measures.

23 (4) The Agreement on Textiles and Clothing.

24 (5) The Agreement on Technical Barriers to
25 Trade.

1 (6) The Agreement on Trade-Related Invest-
2 ment Measures.

3 (7) The Agreement on Implementation of Arti-
4 cle VI of the General Agreement on Tariffs and
5 Trade 1994.

6 (8) The Agreement on Implementation of Arti-
7 cle VII of the General Agreement on Tariffs and
8 Trade 1994.

9 (9) The Agreement on Preshipment Inspection.

10 (10) The Agreement on Rules of Origin.

11 (11) The Agreement on Import Licensing Pro-
12 cedures.

13 (12) The Agreement on Subsidies and Counter-
14 vailing Measures.

15 (13) The Agreement on Safeguards.

16 (14) The General Agreement on Trade in Serv-
17 ices.

18 (15) The Agreement on Trade-Related Aspects
19 of Intellectual Property Rights.

20 (16) The Understanding on Rules and Proce-
21 dures Governing the Settlement of Disputes.

22 (17) The Agreement on Government Procure-
23 ment.

24 (18) The International Bovine Meat Agreement.

1 **SEC. 102. RELATIONSHIP OF THE AGREEMENTS TO UNITED**
2 **STATES LAW AND STATE LAW.**

3 (a) RELATIONSHIP OF AGREEMENTS TO UNITED
4 STATES LAW.—

5 (1) UNITED STATES LAW TO PREVAIL IN CON-
6 FFLICT.—No provision of any of the Uruguay Round
7 Agreements, nor the application of any such provi-
8 sion to any person or circumstance, that is inconsis-
9 tent with any law of the United States shall have ef-
10 fect.

11 (2) CONSTRUCTION.—Nothing in this Act shall
12 be construed—

13 (A) to amend or modify any law of the
14 United States, including any law relating to—

15 (i) the protection of human, animal,
16 or plant life or health,

17 (ii) the protection of the environment,
18 or

19 (iii) worker safety, or

20 (B) to limit any authority conferred under
21 any law of the United States, including section
22 301 of the Trade Act of 1974,
23 unless specifically provided for in this Act.

24 (b) RELATIONSHIP OF AGREEMENTS TO STATE
25 LAW.—

26 (1) FEDERAL-STATE CONSULTATION.—

1 (A) IN GENERAL.—Upon the enactment of
2 this Act, the President shall, through the inter-
3 governmental policy advisory committees on
4 trade established under section 306(c)(2)(A) of
5 the Trade and Tariff Act of 1984 (19 U.S.C.
6 2114c(2)(A)), consult with the States for the
7 purpose of achieving conformity of State laws
8 and practices with the Uruguay Round Agree-
9 ments.

10 (B) FEDERAL-STATE CONSULTATION
11 PROCESS.—The Trade Representative shall es-
12 tablish within the Office of the United States
13 Trade Representative a Federal-State consulta-
14 tion process for addressing issues relating to
15 the Uruguay Round Agreements that directly
16 relate to, or will potentially have a direct effect
17 on, the States. The Federal-State consultation
18 process shall include procedures under which—

19 (i) the States will be informed on a
20 continuing basis of matters under the Uru-
21 guay Round Agreements that directly re-
22 late to, or will potentially have a direct im-
23 pact on, the States;

24 (ii) the States will be provided an op-
25 portunity to submit, on a continuing basis,

1 to the Trade Representative information
2 and advice with respect to matters referred
3 to in clause (i); and

4 (iii) the Trade Representative will
5 take into account the information and ad-
6 vice received from the States under clause
7 (ii) when formulating United States posi-
8 tions regarding matters referred to in
9 clause (i).

10 The Federal Advisory Committee Act (5 U.S.C.
11 App.) shall not apply to the Federal-State con-
12 sultation process established by this paragraph.

13 (C) FEDERAL-STATE COOPERATION IN
14 WTO DISPUTE SETTLEMENT.—

15 (i) When a WTO member requests
16 consultations with the United States under
17 Article 4 of the Understanding on Rules
18 and Procedures Governing the Settlement
19 of Disputes referred to in section
20 101(d)(16) (hereafter in this subsection re-
21 ferred to as the “Dispute Settlement Un-
22 derstanding”) concerning whether the law
23 of a State is inconsistent with the obliga-
24 tions undertaken by the United States in
25 any of the Uruguay Round Agreements,

1 the Trade Representative shall notify the
2 Governor of the State or the Governor's
3 designee, and the chief legal officer of the
4 jurisdiction whose law is the subject of the
5 consultations, as soon as possible after the
6 request is received, but in no event later
7 than 7 days thereafter.

8 (ii) Not later than 30 days after re-
9 ceiving such a request for consultations,
10 the Trade Representative shall consult
11 with representatives of the State concerned
12 regarding the matter. If the consultations
13 involve the laws of a large number of
14 States, the Trade Representative may con-
15 sult with an appropriate group of rep-
16 resentatives of the States concerned, as de-
17 termined by those States.

18 (iii) The Trade Representative shall
19 make every effort to ensure that the State
20 concerned is involved in the development of
21 the position of the United States at each
22 stage of the consultations and each subse-
23 quent stage of dispute settlement proceed-
24 ings regarding the matter. In particular,
25 the Trade Representative shall—

1 (I) notify the State concerned not
2 later than 7 days after a WTO mem-
3 ber requests the establishment of a
4 dispute settlement panel or gives no-
5 tice of the WTO member's decision to
6 appeal a report by a dispute settle-
7 ment panel regarding the matter; and

8 (II) provide the State concerned
9 with the opportunity to advise and as-
10 sist the Trade Representative in the
11 preparation of factual information and
12 argumentation for any written or oral
13 presentations by the United States in
14 consultations or in proceedings of a
15 panel or the Appellate Body regarding
16 the matter.

17 (iv) If a dispute settlement panel or
18 the Appellate Body finds that the law of a
19 State is inconsistent with any of the Uru-
20 guay Round Agreements, the Trade Rep-
21 resentative shall consult with the State
22 concerned in an effort to develop a mutu-
23 ally agreeable response to the report of the
24 panel or the Appellate Body and shall
25 make every effort to ensure that the State

1 concerned is involved in the development of
2 the United States position regarding the
3 response.

4 (D) NOTICE TO STATES REGARDING CON-
5 SULTATIONS ON FOREIGN SUBCENTRAL GOV-
6 ERNMENT LAWS.—

7 (i) Subject to clause (ii), the Trade
8 Representative shall, at least 30 days be-
9 fore making a request for consultations
10 under Article 4 of the Dispute Settlement
11 Understanding regarding a subcentral gov-
12 ernment measure of another WTO mem-
13 ber, notify, and solicit the views of, appro-
14 priate representatives of each State regard-
15 ing the matter.

16 (ii) In exigent circumstances clause
17 (i) shall not apply, in which case the Trade
18 Representative shall notify the appropriate
19 representatives of each State not later than
20 3 days after making the request for con-
21 sultations referred to in clause (i).

22 (2) LEGAL CHALLENGE.—

23 (A) IN GENERAL.—No State law, or the
24 application of such a State law, may be de-
25 clared invalid as to any person or circumstance

1 on the ground that the provision or application
2 is inconsistent with any of the Uruguay Round
3 Agreements, except in an action brought by the
4 United States for the purpose of declaring such
5 law or application invalid.

6 (B) PROCEDURES GOVERNING ACTION.—In
7 any action described in subparagraph (A) that
8 is brought by the United States against a State
9 or any subdivision thereof—

10 (i) a report of a dispute settlement
11 panel or the Appellate Body convened
12 under the Dispute Settlement Understand-
13 ing regarding the State law, or the law of
14 any political subdivision thereof, shall not
15 be considered as binding or otherwise ac-
16 corded deference;

17 (ii) the United States shall have the
18 burden of proving that the law that is the
19 subject of the action, or the application of
20 that law, is inconsistent with the agree-
21 ment in question;

22 (iii) any State whose interests may be
23 impaired or impeded in the action shall
24 have the unconditional right to intervene in
25 the action as a party, and the United

1 States shall be entitled to amend its com-
2 plaint to include a claim or cross-claim
3 concerning the law of a State that so inter-
4 venes; and

5 (iv) any State law that is declared in-
6 valid shall not be deemed to have been in-
7 valid in its application during any period
8 before the court's judgment becomes final
9 and all timely appeals, including discre-
10 tionary review, of such judgment are ex-
11 hausted.

12 (C) REPORTS TO CONGRESSIONAL COMMIT-
13 TEES.—At least 30 days before the United
14 States brings an action described in subpara-
15 graph (A), the Trade Representative shall pro-
16 vide a report to the Committee on Ways and
17 Means of the House of Representatives and the
18 Committee on Finance of the Senate—

19 (i) describing the proposed action;

20 (ii) describing efforts by the Trade
21 Representative to resolve the matter with
22 the State concerned by other means; and

23 (iii) if the State law was the subject
24 of consultations under the Dispute Settle-
25 ment Understanding, certifying that the

1 Trade Representative has substantially
2 complied with the requirements of para-
3 graph (1)(C) in connection with the mat-
4 ter.

5 Following the submission of the report, and before
6 the action is brought, the Trade Representative shall
7 consult with the committees referred to in the pre-
8 ceding sentence concerning the matter.

9 (3) DEFINITION OF STATE LAW.—For purposes
10 of this subsection—

11 (A) the term “State law” includes—

12 (i) any law of a political subdivision of
13 a State; and

14 (ii) any State law regulating or taxing
15 the business of insurance; and

16 (B) the terms “dispute settlement panel”
17 and “Appellate Body” have the meanings given
18 those terms in section 121.

19 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-
20 VATE REMEDIES.—

21 (1) LIMITATIONS.—No person other than the
22 United States—

23 (A) shall have any cause of action or de-
24 fense under any of the Uruguay Round Agree-

1 ments or by virtue of congressional approval of
2 such an agreement, or

3 (B) may challenge, in any action brought
4 under any provision of law, any action or inac-
5 tion by any department, agency, or other in-
6 strumentality of the United States, any State,
7 or any political subdivision of a State on the
8 ground that such action or inaction is inconsis-
9 tent with such agreement.

10 (2) INTENT OF CONGRESS.—It is the intention
11 of the Congress through paragraph (1) to occupy the
12 field with respect to any cause of action or defense
13 under or in connection with any of the Uruguay
14 Round Agreements, including by precluding any per-
15 son other than the United States from bringing any
16 action against any State or political subdivision
17 thereof or raising any defense to the application of
18 State law under or in connection with any of the
19 Uruguay Round Agreements—

20 (A) on the basis of a judgment obtained by
21 the United States in an action brought under
22 any such agreement; or

23 (B) on any other basis.

24 (d) STATEMENT OF ADMINISTRATIVE ACTION.—The
25 statement of administrative action approved by the Con-

1 gress under section 101(a) shall be regarded as an author-
2 itative expression by the United States concerning the in-
3 terpretation and application of the Uruguay Round Agree-
4 ments and this Act in any judicial proceeding in which
5 a question arises concerning such interpretation or appli-
6 cation.

7 **SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF**
8 **ENTRY INTO FORCE; REGULATIONS.**

9 (a) IMPLEMENTING ACTIONS.—After the date of the
10 enactment of this Act—

11 (1) the President may proclaim such actions,
12 and

13 (2) other appropriate officers of the United
14 States Government may issue such regulations,

15 as may be necessary to ensure that any provision of this
16 Act, or amendment made by this Act, that takes effect
17 on the date any of the Uruguay Round Agreements enters
18 into force with respect to the United States is appro-
19 priately implemented on such date. Such proclamation or
20 regulation may not have an effective date earlier than the
21 date of entry into force with respect to the United States
22 of the agreement to which the proclamation or regulation
23 relates.

24 (b) REGULATIONS.—Any interim regulation nec-
25 essary or appropriate to carry out any action proposed in

1 the statement of administrative action approved under sec-
2 tion 101(a) to implement an agreement described in sec-
3 tion 101(d) (7), (12), or (13) shall be issued not later than
4 1 year after the date on which the agreement enters into
5 force with respect to the United States.

6 **Subtitle B—Tariff Modifications**

7 **SEC. 111. TARIFF MODIFICATIONS.**

8 (a) IN GENERAL.—In addition to the authority pro-
9 vided by section 1102 of the Omnibus Trade and Competi-
10 tiveness Act of 1988 (19 U.S.C. 2902), the President shall
11 have the authority to proclaim—

- 12 (1) such other modification of any duty,
- 13 (2) such other staged rate reduction, or
- 14 (3) such additional duties,

15 as the President determines to be necessary or appropriate
16 to carry out Schedule XX.

17 (b) OTHER TARIFF MODIFICATIONS.—Subject to the
18 consultation and layover requirements of section 115, the
19 President may proclaim—

- 20 (1) the modification of any duty or staged rate
21 reduction of any duty set forth in Schedule XX if—
 - 22 (A) the United States agrees to such modi-
23 fication or staged rate reduction in a multilat-
24 eral negotiation under the auspices of the
25 WTO, and

1 (B) such modification or staged rate reduc-
2 tion applies to the rate of duty on an article
3 contained in a tariff category that was the sub-
4 ject of reciprocal duty elimination or harmoni-
5 zation negotiations during the Uruguay Round
6 of multilateral trade negotiations, and

7 (2) such modifications as are necessary to cor-
8 rect technical errors in Schedule XX or to make
9 other rectifications to the Schedule.

10 (c) AUTHORITY TO INCREASE DUTIES ON ARTICLES
11 FROM CERTAIN COUNTRIES.—

12 (1) IN GENERAL.—

13 (A) DETERMINATION WITH RESPECT TO
14 CERTAIN COUNTRIES.—Notwithstanding section
15 251 of the Trade Expansion Act of 1962 (19
16 U.S.C. 1881), after the entry into force of the
17 WTO Agreement with respect to the United
18 States, if the President—

19 (i) determines that a foreign country
20 (other than a foreign country that is a
21 WTO member country) is not according
22 adequate trade benefits to the United
23 States, including substantially equal com-
24 petitive opportunities for the commerce of
25 the United States, and

1 (ii) consults with the Committee on
2 Ways and Means of the House of Rep-
3 resentatives and the Committee on Finance
4 of the Senate,

5 the President may proclaim an increase in the
6 rate of duty with respect to any article of such
7 country in accordance with subparagraph (B).

8 (B) RATE OF DUTY DESCRIBED.—The
9 President may proclaim a rate of duty on any
10 article of a country identified under subpara-
11 graph (A) that is equal to the greater of—

12 (i) the rate of duty set forth for such
13 article in the base rate of duty column of
14 Schedule XX, or

15 (ii) the rate of duty set forth for such
16 article in the bound rate of duty column of
17 Schedule XX.

18 (2) TERMINATION OF INCREASED DUTIES.—
19 The President shall terminate any increase in the
20 rate of duty proclaimed under this subsection by a
21 proclamation which shall be effective on the earlier
22 of—

23 (A) the date set out in such proclamation
24 of termination, or

1 (B) the date the WTO Agreement enters
 2 into force with respect to the foreign country
 3 with respect to which the determination under
 4 paragraph (1) was made.

5 (3) PUBLICATION OF DETERMINATION AND
 6 TERMINATION.—The President shall publish in the
 7 Federal Register notice of a determination made
 8 under paragraph (1) and a termination occurring by
 9 reason of paragraph (2).

10 (d) ADJUSTMENTS TO CERTAIN COLUMN 2 RATES OF
 11 DUTY.—At such time as the President proclaims any
 12 modification to the HTS to implement the provisions of
 13 Schedule XX, the President shall also proclaim the rate
 14 of duty set forth in Column B as the column 2 rate of
 15 duty for the subheading of the HTS that corresponds to
 16 the subheading in Schedule XX listed in Column A.

Column A	Column B
Schedule XX subheading:	Rate of duty for column 2 of the HTS:
0201.10.50	31.1%
0201.20.80	31.1%
0201.30.80	31.1%
0202.10.50	31.1%
0202.20.80	31.1%
0202.30.80	31.1%
0401.30.25	90.8¢/liter
0401.30.75	\$1.936/kg
0402.10.50	\$1.018/kg
0402.21.25	\$1.018/kg
0402.21.50	\$1.285/kg
0402.21.90	\$1.831/kg
0402.29.50	\$1.299/kg + 17.5%
0402.91.60	36.8¢/kg
0402.99.50	58.4¢/kg
0402.99.90	54.5¢/kg + 17.5%

0403.10.50	\$1.217/kg + 20%
0403.90.16	90.8¢/liter
0403.90.45	\$1.03/kg
0403.90.55	\$1.285/kg
0403.90.65	\$1.831/kg
0403.90.78	\$1.936/kg
0403.90.95	\$1.217/kg + 20%
0404.10.11	20%
0404.10.15	\$1.217/kg + 10%
0404.10.90	\$1.03/kg
0404.90.30	25%
0404.90.50	\$1.399/kg + 10%
0405.00.40	\$1.813/kg
0405.00.90	\$2.194/kg + 10%
0406.10.08	\$1.775/kg
0406.10.18	\$2.67/kg
0406.10.28	\$1.443/kg
0406.10.38	\$1.241/kg
0406.10.48	\$2.121/kg
0406.10.58	\$2.525/kg
0406.10.68	\$1.631/kg
0406.10.78	\$1.328/kg
0406.10.88	\$1.775/kg
0406.20.28	\$2.67/kg
0406.20.33	\$1.443/kg
0406.20.39	\$1.241/kg
0406.20.48	\$2.121/kg
0406.20.53	\$2.525/kg
0406.20.63	\$2.67/kg
0406.20.67	\$1.443/kg
0406.20.71	\$1.241/kg
0406.20.75	\$2.121/kg
0406.20.79	\$2.525/kg
0406.20.83	\$1.631/kg
0406.20.87	\$1.328/kg
0406.20.91	\$1.775/kg
0406.30.18	\$2.67/kg
0406.30.28	\$1.443/kg
0406.30.38	\$1.241/kg
0406.30.48	\$2.121/kg
0406.30.53	\$1.631/kg
0406.30.63	\$2.67/kg
0406.30.67	\$1.443/kg
0406.30.71	\$1.241/kg
0406.30.75	\$2.121/kg
0406.30.79	\$2.525/kg
0406.30.83	\$1.631/kg
0406.30.87	\$1.328/kg
0406.30.91	\$1.775/kg
0406.40.70	\$2.67/kg
0406.90.12	\$1.443/kg
0406.90.18	\$2.121/kg
0406.90.33	\$2.525/kg
0406.90.38	\$2.525/kg

0406.90.43	\$2.525/kg
0406.90.48	\$2.208/kg
0406.90.64	\$1.241/kg
0406.90.68	\$2.525/kg
0406.90.74	\$2.67/kg
0406.90.78	\$1.443/kg
0406.90.84	\$1.241/kg
0406.90.88	\$2.121/kg
0406.90.92	\$1.631/kg
0406.90.94	\$1.328/kg
0406.90.97	\$1.775/kg
1202.10.80	192.7%
1202.20.80	155%
1517.90.60	40.2¢/kg
1701.11.50	39.85¢/kg
1701.12.10	6.58170¢/kg less 0.0622005¢/ kg for each degree under 100 degrees (and fractions of a de- gree in proportion) but not less than 5.031562¢/kg
1701.12.50	42.05¢/kg
1701.91.10	6.58170¢/kg less 0.0622005¢/ kg for each degree under 100 degrees (and fractions of a de- gree in proportion) but not less than 5.031562¢/kg
1701.91.30	42.05¢/kg
1701.91.48	39.9¢/kg + 6%
1701.91.58	39.9¢/kg + 6%
1701.99.10	6.58170¢/kg less 0.0622005¢/ kg for each degree under 100 degrees (and fractions of a de- gree in proportion) but not less than 5.031562¢/kg
1701.99.50	42.05¢/kg
1702.20.28	19.9¢/kg of total sugars + 6%
1702.30.28	19.9¢/kg of total sugars + 6%
1702.40.28	39.9¢/kg of total sugars + 6%
1702.60.28	39.9¢/kg of total sugars + 6%
1702.90.10	6.58170¢/kg of total sugars
1702.90.20	42.05¢/kg
1702.90.58	39.9¢/kg of total sugars + 6%
1702.90.68	39.9¢/kg + 6%
1704.90.58	47.4¢/kg + 12.2%
1704.90.68	47.4¢/kg + 12.2%
1704.90.78	47.4¢/kg + 12.2%
1806.10.15	25.5¢/kg
1806.10.28	39.5¢/kg
1806.10.38	39.5¢/kg
1806.10.55	39.5¢/kg
1806.10.75	39.5¢/kg
1806.20.26	43.8¢/kg + 5%
1806.20.28	62.1¢/kg + 5%
1806.20.36	43.8¢/kg + 5%

1806.20.38	62.1¢/kg + 5%
1806.20.73	35.9¢/kg + 10%
1806.20.77	35.9¢/kg + 10%
1806.20.82	43.8¢/kg + 10%
1806.20.83	62.1¢/kg + 10%
1806.20.87	43.8¢/kg + 10%
1806.20.89	62.1¢/kg + 10%
1806.20.92	43.8¢/kg + 10%
1806.20.93	62.1¢/kg + 10%
1806.20.96	43.8¢/kg + 10%
1806.20.97	62.1¢/kg + 10%
1806.32.06	43.8¢/kg + 5%
1806.32.08	62.1¢/kg + 5%
1806.32.16	43.8¢/kg + 5%
1806.32.18	62.1¢/kg + 5%
1806.32.70	43.8¢/kg + 7%
1806.32.80	62.1¢/kg + 7%
1806.90.08	43.8¢/kg + 7%
1806.90.10	62.1¢/kg + 7%
1806.90.18	43.8¢/kg + 7%
1806.90.20	62.1¢/kg + 7%
1806.90.28	43.8¢/kg + 7%
1806.90.30	62.1¢/kg + 7%
1806.90.38	43.8¢/kg + 7%
1806.90.40	62.1¢/kg + 7%
1806.90.48	43.8¢/kg + 7%
1806.90.50	62.1¢/kg + 7%
1806.90.58	43.8¢/kg + 7%
1806.90.60	62.1¢/kg + 7%
1901.10.30	\$1.217/kg + 17.5%
1901.10.40	\$1.217/kg + 17.5%
1901.10.75	\$1.217/kg + 17.5%
1901.10.85	\$1.217/kg + 17.5%
1901.20.15	49.8¢/kg + 10%
1901.20.25	49.8¢/kg + 10%
1901.20.35	49.8¢/kg + 10%
1901.20.50	49.8¢/kg + 10%
1901.20.60	49.8¢/kg + 10%
1901.20.70	49.8¢/kg + 10%
1901.90.36	\$1.328/kg
1901.90.42	25%
1901.90.44	\$1.217/kg + 16%
1901.90.46	25%
1901.90.48	\$1.217/kg + 16%
1901.90.54	27.9¢/kg + 10%
1901.90.58	27.9¢/kg + 10%
2008.11.15	155%
2008.11.35	155%
2008.11.60	155%
2101.10.38	35.9¢/kg + 10%
2101.10.48	35.9¢/kg + 10%
2101.10.58	35.9¢/kg + 10%
2101.20.38	35.9¢/kg + 10%
2101.20.48	35.9¢/kg + 10%

2101.20.58	35.9¢/kg + 10%
2103.90.78	35.9¢/kg + 7.5%
2105.00.20	59¢/kg + 20%
2105.00.40	59¢/kg + 20%
2106.90.02	\$1.014/kg
2106.90.04	\$2.348/kg
2106.90.08	\$2.348/kg
2106.90.11	6.58170¢/kg of total sugars
2106.90.12	42.05¢/kg
2106.90.34	82.8¢/kg + 10%
2106.90.38	82.8¢/kg + 10%
2106.90.44	82.8¢/kg + 10%
2106.90.48	82.8¢/kg + 10%
2106.90.57	33.9¢/kg + 10%
2106.90.67	33.9¢/kg + 10%
2106.90.77	33.9¢/kg + 10%
2106.90.87	33.9¢/kg + 10%
2202.90.28	27.6¢/liter + 17.5%
2309.90.28	94.6¢/kg + 7.5%
2309.90.48	94.6¢/kg + 7.5%
2401.10.70	85¢/kg
2401.10.90	85¢/kg
2401.20.30	\$1.21/kg
2401.20.45	\$1.15/kg
2401.20.55	\$1.15/kg
2801.30.20	37%
2805.30.00	31.3%
2805.40.00	5.7%
2811.19.10	4.9%
2818.10.20	4.1%
2822.00.00	1.7%
2827.39.20	31.9%
2833.11.50	3.6%
2833.27.00	4.2%
2836.40.20	4.8%
2836.60.00	8.4%
2837.20.10	5.1%
2840.11.00	1.2%
2840.19.00	0.4%
2849.20.20	1.6%
2903.15.00	88%
2903.16.00	33.3%
2903.30.05	46.3%
2906.11.00	6.2%
2907.12.00	48.3%
2909.11.00	4%
2912.11.00	12.1%
2916.15.10	35.2%
2916.19.30	24.4%
2923.20.20	33.4%
3213.90.00	48.6%
3307.10.20	81.7%
3307.49.00	73.2%
3403.11.20	0.4%

3403.19.10	0.4%
3506.10.10	30.4%
3603.00.30	8.3%
3603.00.90	0.3%
3604.10.00	12.5%
3606.90.30	56.7%
3706.10.30	7%
3807.00.00	0.2%
3823.90.33	26.3%
3904.61.00	34.1%
3916.90.10	40.6%
3920.51.50	48.2%
3920.59.80	51.7%
3926.90.65	8.4%
5201.00.18	36.9¢/kg
5201.00.28	36.9¢/kg
5201.00.38	36.9¢/kg
5201.00.80	36.9¢/kg
5202.99.30	9.2¢/kg
5203.00.30	36.9¢/kg

1 (e) AUTHORITY TO CONSOLIDATE SUBHEADINGS
2 AND MODIFY COLUMN 2 RATES OF DUTY FOR TARIFF
3 SIMPLIFICATION PURPOSES.—

4 (1) IN GENERAL.—Whenever the HTS column
5 1 general rates of duty for 2 or more 8-digit sub-
6 headings are at the same level and such subheadings
7 are subordinate to a provision required by the Inter-
8 national Convention on the Harmonized Commodity
9 Description and Coding System, the President may
10 proclaim, subject to the consultation and layover re-
11 quirements of section 115, that the goods described
12 in such subheadings be provided for in a single 8-
13 digit subheading of the HTS, and that—

14 (A) the HTS column 1 general rate of
15 duty for such single subheading be the column

1 1 general rate of duty common to all such sub-
2 headings, and

3 (B) the HTS column 2 rate of duty for
4 such single subheading be the highest column 2
5 rate of duty for such subheadings that is in ef-
6 fect on the day before the effective date of such
7 proclamation.

8 (2) SAME LEVEL OF DUTY.—The provisions of
9 this subsection apply to subheadings described in
10 paragraph (1) that have the same column 1 general
11 rate of duty—

12 (A) on the date of the enactment of this
13 Act, or

14 (B) after such date of enactment as a re-
15 sult of a staged reduction in such column 1
16 rates of duty.

17 **SEC. 112. IMPLEMENTATION OF SCHEDULE XX PROVISIONS**
18 **ON SHIP REPAIRS.**

19 (a) IN GENERAL.—Section 484E(b) of the Customs
20 and Trade Act of 1990 (19 U.S.C. 1466 note; 104 Stat.
21 710) is amended—

22 (1) by striking “and” at the end of paragraph
23 (1);

24 (2) by striking the period at the end of para-
25 graph (2) and inserting “, and”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(3) any entry made pursuant to section 466(h)
4 (1) or (2) of the Tariff Act of 1930 (19 U.S.C.
5 1466(h) (1) or (2)), on or after the date of the entry
6 into force of the WTO Agreement with respect to
7 the United States.”.

8 (b) EXEMPTION FOR CERTAIN SPARE PARTS.—Sec-
9 tion 466(h) of the Tariff Act of 1930 (19 U.S.C. 1466(h))
10 is amended—

11 (1) by striking “or” at the end of paragraph
12 (1);

13 (2) by striking the period at the end of para-
14 graph (2) and inserting “, or”; and

15 (3) by adding at the end the following new
16 paragraph:

17 “(3) the cost of spare parts necessarily installed
18 before the first entry into the United States, but
19 only if duty is paid under appropriate commodity
20 classifications of the Harmonized Tariff Schedule of
21 the United States upon first entry into the United
22 States of each such spare part purchased in, or im-
23 ported from, a foreign country.”.

1 **SEC. 113. LIQUIDATION OR RELIQUIDATION AND REFUND**
2 **OF DUTY PAID ON CERTAIN ENTRIES.**

3 (a) LIQUIDATION OR RELIQUIDATION.—Notwith-
4 standing section 514 of the Tariff Act of 1930 (19 U.S.C.
5 1514) or any other provision of law, and subject to sub-
6 section (b), the Secretary of the Treasury shall liquidate
7 or reliquidate the entries listed or otherwise described in
8 subsection (c) and refund any duty or excess duty that
9 was paid, as provided in subsection (c).

10 (b) REQUESTS.—Liquidation or reliquidation may be
11 made under subsection (a) with respect to an entry only
12 if a request therefor is filed with the Customs Service,
13 within 180 days after the date on which the WTO Agree-
14 ment enters into force with respect to the United States,
15 that contains sufficient information to enable the Customs
16 Service—

17 (1) to locate the entry; or

18 (2) to reconstruct the entry if it cannot be lo-
19 cated.

20 (c) ENTRIES.—The entries referred to in subsection
21 (a) are as follows:

22 (1) AGGLOMERATED STONE TILES.—Any
23 goods—

24 (A) for which the importer claimed or
25 would have claimed entry under subheading
26 6810.19.12 of the HTS on or after October 1,

1 1990, and before the effective date of a procla-
2 mation issued by the President under section
3 103(a) of this Act with respect to items under
4 such subheading in order to carry out Schedule
5 XX, or

6 (B) entered on or after January 1, 1989,
7 and before October 1, 1990, for which entry
8 would have been claimed under subheading
9 6810.19.12 of the HTS on or after October 1,
10 1990,

11 shall be liquidated or reliquidated as if the wording
12 of that subheading were “Of stone agglomerated
13 with binders other than cement”, and the Secretary
14 of the Treasury shall refund any excess duties paid
15 with respect to such entries.

16 (2) CLOMIPHENE CITRATE.—

17 (A) Any entry, or withdrawal from ware-
18 house for consumption, of goods under heading
19 9902.29.95 of the HTS (relating to clomiphene
20 citrate) which was made after December 31,
21 1988, and before January 1, 1993, and with re-
22 spect to which there would have been no duty
23 if the reference to subheading “2922.19.15” in
24 such heading were a reference to subheading
25 “2922.19.15 or any subheading of chapter 30”

1 at the time of such entry or withdrawal, shall
 2 be liquidated or reliquidated as free of duty.

3 (B) The Secretary of the Treasury shall
 4 refund any duties paid with respect to entries
 5 described in subparagraph (A).

6 **SEC. 114. MODIFICATIONS TO THE HTS.**

7 (a) WOOL.—

8 (1) AMENDMENTS.—Chapter 51 of the HTS is
 9 amended—

10 (A) by striking subheading 5101.21.60 and
 11 inserting the following new superior text and
 12 subheadings, with the superior text having the
 13 same degree of indentation as the article de-
 14 scription in subheading 5101.11.60:

5101.21.65	Other: Unimproved wool; other wool, not finer than 46s	Free		81.6¢/ kg+ 20%
5101.21.70	Other	7.7¢/ kg+ 6.25%	Free (MX) 0.8¢/kg+ 0.6% (IL) 3¢/ kg+ 2.5% (CA)	81.6¢/ kg+ 20%

15 (B) by striking subheading 5101.29.60 and
 16 inserting the following new superior text and
 17 subheadings, with the superior text having the
 18 same degree of indentation as the article de-
 19 scription in subheading 5102.10.20:

	Other:			
--	--------	--	--	--

5101.29.65	Unimproved wool; other wool, not finer than 46s	Free		81.6¢/ kg+ 20%
5101.29.70	Other	7.7¢/ kg+ 6.25%	0.8¢/kg+ 0.6% (IL) 3¢/ kg+ 2.5% (CA) 6.1¢/kg+ 5% (MX)	81.6¢/ kg+ 20%

1 and

2 (C) by striking subheading 5101.30.60 and

3 inserting the following new superior text and

4 subheadings, with the superior text having the

5 same degree of indentation as the superior text

6 immediately preceding subheading 5102.10.20:

5101.30.65	Other: Unimproved wool; other wool, not finer than 46s	Free		81.6¢/ kg+ 20%
5101.30.70	Other	7.7¢/ kg+ 6.25%	Free (MX) 0.8¢/kg+ 0.6% (IL) 3¢/ kg+ 2.5% (CA)	81.6¢/ kg+ 20%

7 (2) EFFECTIVE DATE.—The amendments made

8 by this subsection take effect on the effective date

9 of the proclamation issued by the President under

10 section 103(a) to carry out Schedule XX.

11 (b) DUTY FREE TREATMENT FOR OCTADECYL

12 ISOCYANATE AND 5-CHLORO-2-(2,4-DICHLORO-

13 PHENOXY)PHENOL.—The President—

14 (1) shall proclaim duty-free entry for octadecyl

15 isocyanate and 5-Chloro-2-(2,4-dichloro-

16 phenoxy)phenol, to be effective on the effective date

17 of the proclamation issued by the President under

18 section 103(a) to carry out Schedule XX, and

1 (2) shall take such actions as are necessary to
2 reflect such tariff treatment in Schedule XX.

3 **SEC. 115. CONSULTATION AND LAYOVER REQUIREMENTS**
4 **FOR, AND EFFECTIVE DATE OF, PROCLAIMED**
5 **ACTIONS.**

6 If a provision of this Act provides that the implemen-
7 tation of an action by the President by proclamation is
8 subject to the consultation and layover requirements of
9 this section, such action may be proclaimed only if—

10 (1) the President has obtained advice regarding
11 the proposed action from—

12 (A) the appropriate advisory committees
13 established under section 135 of the Trade Act
14 of 1974 (19 U.S.C. 2155), and

15 (B) the International Trade Commission;

16 (2) the President has submitted a report to the
17 Committee on Ways and Means of the House of
18 Representatives and the Committee on Finance of
19 the Senate that sets forth—

20 (A) the action proposed to be proclaimed
21 and the reasons for such actions, and

22 (B) the advice obtained under paragraph
23 (1);

24 (3) a period of 60 calendar days, beginning
25 with the first day on which the President has met

1 the requirements of paragraphs (1) and (2) with re-
2 spect to such action, has expired; and

3 (4) the President has consulted with such com-
4 mittees regarding the proposed action during the pe-
5 riod referred to in paragraph (3).

6 **SEC. 116. EFFECTIVE DATE.**

7 (a) IN GENERAL.—Except as provided in section
8 114(a) and subsection (b) of this section, this subtitle and
9 the amendments made by this subtitle take effect on the
10 date on which the WTO Agreement enters into force with
11 respect to the United States.

12 (b) SECTION 115.—Section 115 takes effect on the
13 date of the enactment of this Act.

14 **Subtitle C—Uruguay Round Imple-**
15 **mentation and Dispute Settle-**
16 **ment**

17 **SEC. 121. DEFINITIONS.**

18 For purposes of this subtitle:

19 (1) ADMINISTERING AUTHORITY.—The term
20 “administering authority” has the meaning given
21 that term in section 771(1) of the Tariff Act of
22 1930.

23 (2) APPELLATE BODY.—The term “Appellate
24 Body” means the Appellate Body established under

1 Article 17.1 of the Dispute Settlement Understand-
2 ing.

3 (3) APPROPRIATE CONGRESSIONAL COMMIT-
4 TEES; CONGRESSIONAL COMMITTEES.—

5 (A) APPROPRIATE CONGRESSIONAL COM-
6 MITTEES.—The term “appropriate congres-
7 sional committees” means the committees re-
8 ferred to in subparagraph (B) and any other
9 committees of the Congress that have jurisdic-
10 tion involving the matter with respect to which
11 consultations are to be held.

12 (B) CONGRESSIONAL COMMITTEES.—The
13 term “congressional committees” means the
14 Committee on Ways and Means of the House of
15 Representatives and the Committee on Finance
16 of the Senate.

17 (4) DISPUTE SETTLEMENT PANEL; PANEL.—
18 The terms “dispute settlement panel” and “panel”
19 mean a panel established pursuant to Article 6 of
20 the Dispute Settlement Understanding.

21 (5) DISPUTE SETTLEMENT BODY.—The term
22 “Dispute Settlement Body” means the Dispute Set-
23 tlement Body administering the rules and proce-
24 dures set forth in the Dispute Settlement Under-
25 standing.

1 (6) DISPUTE SETTLEMENT UNDERSTANDING.—
2 The term “Dispute Settlement Understanding”
3 means the Understanding on Rules and Procedures
4 Governing the Settlement of Disputes referred to in
5 section 101(d)(16).

6 (7) GENERAL COUNCIL.—The term “General
7 Council” means the General Council established
8 under paragraph 2 of Article IV of the WTO Agree-
9 ment.

10 (8) MINISTERIAL CONFERENCE.—The term
11 “Ministerial Conference” means the Ministerial Con-
12 ference established under paragraph 1 of Article IV
13 of the WTO Agreement.

14 (9) OTHER TERMS.—The terms “Antidumping
15 Agreement”, “Agreement on Subsidies and Counter-
16 vailing Measures”, and “Safeguards Agreement”
17 mean the agreements referred to in section
18 101(d)(7), (12), and (13), respectively.

19 **SEC. 122. IMPLEMENTATION OF URUGUAY ROUND AGREE-**
20 **MENTS.**

21 (a) DECISIONMAKING.—In the implementation of the
22 Uruguay Round Agreements and the functioning of the
23 World Trade Organization, it is the objective of the United
24 States to ensure that the Ministerial Conference and the
25 General Council continue the practice of decisionmaking

1 by consensus followed under the GATT 1947, as required
2 by paragraph 1 of article IX of the WTO Agreement.

3 (b) CONSULTATIONS WITH CONGRESSIONAL COM-
4 MITTEES.—In furtherance of the objective set forth in
5 subsection (a), the Trade Representative shall consult with
6 the appropriate congressional committees before any vote
7 is taken by the Ministerial Conference or the General
8 Council relating to—

9 (1) the adoption of an interpretation of the
10 WTO Agreement or another multilateral trade
11 agreement,

12 (2) the amendment of any such agreement,

13 (3) the granting of a waiver of any obligation
14 under any such agreement,

15 (4) the adoption of any amendment to the rules
16 or procedures of the Ministerial Conference or the
17 General Council,

18 (5) the accession of a state or separate customs
19 territory to the WTO Agreement, or

20 (6) the adoption of any other decision,

21 if the action described in paragraph (1), (2), (3), (4), (5),
22 or (6) would substantially affect the rights or obligations
23 of the United States under the WTO Agreement or an-
24 other multilateral trade agreement or potentially entails
25 a change in Federal or State law.

1 (c) REPORT ON DECISIONS.—

2 (1) IN GENERAL.—Not later than 30 days after
3 the end of any calendar year in which the Ministerial
4 Conference or the General Council adopts by vote
5 any decision to take any action described in para-
6 graph (1), (2), (4), or (6) of subsection (b), the
7 Trade Representative shall submit a report to the
8 appropriate congressional committees describing—

9 (A) the nature of the decision;

10 (B) the efforts made by the United States
11 to have the matter decided by consensus pursu-
12 ant to paragraph 1 of article IX of the WTO
13 Agreement, and the results of those efforts;

14 (C) which countries voted for, and which
15 countries voted against, the decision;

16 (D) the rights or obligations of the United
17 States affected by the decision and any Federal
18 or State law that would be amended or re-
19 pealed, if the President after consultation with
20 the Congress determined that such amendment
21 or repeal was an appropriate response; and

22 (E) the action the President intends to
23 take in response to the decision or, if the Presi-
24 dent does not intend to take any action, the
25 reasons therefor.

1 (2) ADDITIONAL REPORTING REQUIREMENTS.—

2 (A) GRANT OF WAIVER.—In the case of a
3 decision to grant a waiver described in sub-
4 section (b)(3), the report under paragraph (1)
5 shall describe the terms and conditions of the
6 waiver and the rights and obligations of the
7 United States that are affected by the waiver.

8 (B) ACCESSION.—In the case of a decision
9 on accession described in subsection (b)(5), the
10 report under paragraph (1) shall state whether
11 the United States intends to invoke Article XIII
12 of the WTO Agreement.

13 (d) CONSULTATION ON REPORT.—Promptly after the
14 submission of a report under subsection (c), the Trade
15 Representative shall consult with the appropriate congres-
16 sional committees with respect to the report.

17 **SEC. 123. DISPUTE SETTLEMENT PANELS AND PROCE-**
18 **DURES.**

19 (a) REVIEW BY PRESIDENT.—The President shall re-
20 view annually the WTO panel roster and shall include the
21 panel roster and the list of persons serving on the Appel-
22 late Body in the annual report submitted by the President
23 under section 163(a) of the Trade Act of 1974.

24 (b) QUALIFICATIONS OF APPOINTEES TO PANELS.—
25 The Trade Representative shall—

1 (1) seek to ensure that persons appointed to the
2 WTO panel roster are well-qualified, and that the
3 roster includes persons with expertise in the subject
4 areas covered by the Uruguay Round Agreements;
5 and

6 (2) inform the President of persons nominated
7 to the roster by other WTO member countries.

8 (c) RULES GOVERNING CONFLICTS OF INTEREST.—
9 The Trade Representative shall seek the establishment by
10 the General Council and the Dispute Settlement Body of
11 rules governing conflicts of interest by persons serving on
12 panels and members of the Appellate Body and shall de-
13 scribe, in the annual report submitted under section 124,
14 any progress made in establishing such rules.

15 (d) NOTIFICATION OF DISPUTES.—Promptly after a
16 dispute settlement panel is established to consider the con-
17 sistency of Federal or State law with any of the Uruguay
18 Round Agreements, the Trade Representative shall notify
19 the appropriate congressional committees of—

20 (1) the nature of the dispute, including the
21 matters set forth in the request for the establish-
22 ment of the panel, the legal basis of the complaint,
23 and the specific measures, in particular any State or
24 Federal law cited in the request for establishment of
25 the panel;

1 (2) the identity of the persons serving on the
2 panel; and

3 (3) whether there was any departure from the
4 rule of consensus with respect to the selection of
5 persons to serve on the panel.

6 (e) NOTICE OF APPEALS OF PANEL REPORTS.—If an
7 appeal is taken of a report of a panel in a proceeding de-
8 scribed in subsection (d), the Trade Representative shall,
9 promptly after the notice of appeal is filed, notify the ap-
10 propriate congressional committees of—

11 (1) the issues under appeal; and

12 (2) the identity of the persons serving on the
13 Appellate Body who are reviewing the report of the
14 panel.

15 (f) ACTIONS UPON CIRCULATION OF REPORTS.—
16 Promptly after the circulation of a report of a panel or
17 of the Appellate Body to WTO members in a proceeding
18 described in subsection (d), the Trade Representative
19 shall—

20 (1) notify the appropriate congressional com-
21 mittees of the report;

22 (2) in the case of a report of a panel, consult
23 with the appropriate congressional committees con-
24 cerning the nature of any appeal that may be taken
25 of the report; and

1 (3) if the report is adverse to the United
2 States, consult with the appropriate congressional
3 committees concerning whether to implement the re-
4 port's recommendation and, if so, the manner of
5 such implementation and the period of time needed
6 for such implementation.

7 (g) REQUIREMENTS FOR AGENCY ACTION.—

8 (1) CHANGES IN AGENCY REGULATIONS OR
9 PRACTICE.—In any case in which a dispute settle-
10 ment panel or the Appellate Body finds in its report
11 that a regulation or practice of a department or
12 agency of the United States is inconsistent with any
13 of the Uruguay Round Agreements, that regulation
14 or practice may not be amended, rescinded, or other-
15 wise modified in the implementation of such report
16 unless and until—

17 (A) the appropriate congressional commit-
18 tees have been consulted under subsection (f);

19 (B) the Trade Representative has sought
20 advice regarding the modification from relevant
21 private sector advisory committees established
22 under section 135 of the Trade Act of 1974 (19
23 U.S.C. 2155);

24 (C) the head of the relevant department or
25 agency has provided an opportunity for public

1 comment by publishing in the Federal Register
2 the proposed modification and the explanation
3 for the modification;

4 (D) the Trade Representative has submit-
5 ted to the appropriate congressional committees
6 a report describing the proposed modification,
7 the reasons for the modification, and a sum-
8 mary of the advice obtained under subpara-
9 graph (B) with respect to the modification;

10 (E) the Trade Representative and the head
11 of the relevant department or agency have con-
12 sulted with the appropriate congressional com-
13 mittees on the proposed contents of the final
14 rule or other modification; and

15 (F) the final rule or other modification has
16 been published in the Federal Register.

17 (2) EFFECTIVE DATE OF MODIFICATION.—A
18 final rule or other modification to which paragraph
19 (1) applies may not go into effect before the end of
20 the 60-day period beginning on the date on which
21 consultations under paragraph (1)(E) begin, unless
22 the President determines that an earlier effective
23 date is in the national interest.

24 (3) VOTE BY CONGRESSIONAL COMMITTEES.—
25 During the 60-day period described in paragraph

1 (2), the Committee on Ways and Means of the
2 House of Representatives and the Committee on Fi-
3 nance of the Senate may vote to indicate the agree-
4 ment or disagreement of the committee with the pro-
5 posed contents of the final rule or other modifica-
6 tion. Any such vote shall not be binding on the de-
7 partment or agency which is implementing the rule
8 or other modification.

9 (4) INAPPLICABILITY TO ITC.—This subsection
10 does not apply to any regulation or practice of the
11 International Trade Commission.

12 (h) CONSULTATIONS REGARDING REVIEW OF WTO
13 RULES AND PROCEDURES.—Before the review is con-
14 ducted of the dispute settlement rules and procedures of
15 the WTO that is provided for in the Decision on the Appli-
16 cation of the Understanding on Rules and Procedures
17 Governing the Settlement of Disputes, as such decision is
18 set forth in the Ministerial Declarations and Decisions
19 adopted on April 15, 1994, together with the Uruguay
20 Round Agreements, the Trade Representative shall con-
21 sult with the congressional committees regarding the pol-
22 icy of the United States concerning the review.

23 **SEC. 124. ANNUAL REPORT ON THE WTO.**

24 Not later than March 1 of each year beginning in
25 1996, the Trade Representative shall submit to the Con-

1 gress a report describing, for the preceding fiscal year of
2 the WTO—

3 (1) the major activities and work programs of
4 the WTO, including the functions and activities of
5 the committees established under article IV of the
6 WTO Agreement, and the expenditures made by the
7 WTO in connection with those activities and pro-
8 grams;

9 (2) the percentage of budgetary assessments by
10 the WTO that were accounted for by each WTO
11 member country, including the United States;

12 (3) the total number of personnel employed or
13 retained by the Secretariat of the WTO, and the
14 number of professional, administrative, and support
15 staff of the WTO;

16 (4) for each personnel category described in
17 paragraph (3), the number of citizens of each coun-
18 try, and the average salary of the personnel, in that
19 category;

20 (5) each report issued by a panel or the Appel-
21 late Body in a dispute settlement proceeding regard-
22 ing Federal or State law, and any efforts by the
23 Trade Representative to provide for implementation
24 of the recommendations contained in a report that
25 is adverse to the United States;

1 (6) each proceeding before a panel or the Ap-
2 pellate Body that was initiated during that fiscal
3 year regarding Federal or State law, the status of
4 the proceeding, and the matter at issue;

5 (7) the status of consultations with any State
6 whose law was the subject of a report adverse to the
7 United States that was issued by a panel or the Ap-
8 pellate Body; and

9 (8) any progress achieved in increasing the
10 transparency of proceedings of the Ministerial Con-
11 ference and the General Council, and of dispute set-
12 tlement proceedings conducted pursuant to the Dis-
13 pute Settlement Understanding.

14 **SEC. 125. REVIEW OF PARTICIPATION IN THE WTO.**

15 (a) REPORT ON THE OPERATION OF THE WTO.—
16 The first annual report submitted to the Congress under
17 section 124—

18 (1) after the end of the 5-year period beginning
19 on the date on which the WTO Agreement enters
20 into force with respect to the United States, and

21 (2) after the end of every 5-year period there-
22 after,

23 shall include an analysis of the effects of the WTO Agree-
24 ment on the interests of the United States, the costs and
25 benefits to the United States of its participation in the

1 WTO, and the value of the continued participation of the
2 United States in the WTO.

3 (b) CONGRESSIONAL DISAPPROVAL OF U.S. PARTICI-
4 PATION IN THE WTO.—

5 (1) GENERAL RULE.—The approval of the Con-
6 gress, provided under section 101(a), of the WTO
7 Agreement shall cease to be effective if, and only if,
8 a joint resolution described in subsection (c) is en-
9 acted into law pursuant to the provisions of para-
10 graph (2).

11 (2) PROCEDURAL PROVISIONS.—(A) The re-
12 quirements of this paragraph are met if the joint
13 resolution is enacted under subsection (c), and

14 (i) the Congress adopts and transmits the
15 joint resolution to the President before the end
16 of the 90-day period (excluding any day de-
17 scribed in section 154(b) of the Trade Act of
18 1974), beginning on the date on which the Con-
19 gress receives a report referred to in subsection
20 (a), and

21 (ii) if the President vetoes the joint resolu-
22 tion, each House of Congress votes to override
23 that veto on or before the later of the last day
24 of the 90-day period referred to in clause (i) or
25 the last day of the 15-day period (excluding any

1 day described in section 154(b) of the Trade
2 Act of 1974) beginning on the date on which
3 the Congress receives the veto message from the
4 President.

5 (B) A joint resolution to which this section ap-
6 plies may be introduced at any time on or after the
7 date on which the President transmits to the Con-
8 gress a report described in subsection (a), and be-
9 fore the end of the 90-day period referred to in sub-
10 paragraph (A).

11 (c) JOINT RESOLUTIONS.—

12 (1) JOINT RESOLUTIONS.—For purposes of this
13 section, the term “joint resolution” means only a
14 joint resolution of the 2 Houses of Congress, the
15 matter after the resolving clause of which is as fol-
16 lows: “That the Congress withdraws its approval,
17 provided under section 101(a) of the Uruguay
18 Round Agreements Act, of the WTO Agreement as
19 defined in section 2(9) of that Act.”.

20 (2) PROCEDURES.—(A) Joint resolutions may
21 be introduced in either House of the Congress by
22 any member of such House.

23 (B) Subject to the provisions of this subsection,
24 the provisions of subsections (b), (d), (e), and (f) of
25 section 152 of the Trade Act of 1974 (19 U.S.C.

1 2192(b), (d), (e), and (f)) apply to joint resolutions
2 to the same extent as such provisions apply to reso-
3 lutions under such section.

4 (C) If the committee of either House to which
5 a joint resolution has been referred has not reported
6 it by the close of the 45th day after its introduction
7 (excluding any day described in section 154(b) of the
8 Trade Act of 1974), such committee shall be auto-
9 matically discharged from further consideration of
10 the joint resolution and it shall be placed on the ap-
11 propriate calendar.

12 (D) It is not in order for—

13 (i) the Senate to consider any joint resolu-
14 tion unless it has been reported by the Commit-
15 tee on Finance or the committee has been dis-
16 charged under subparagraph (C); or

17 (ii) the House of Representatives to con-
18 sider any joint resolution unless it has been re-
19 ported by the Committee on Ways and Means
20 or the committee has been discharged under
21 subparagraph (C).

22 (E) A motion in the House of Representatives
23 to proceed to the consideration of a joint resolution
24 may only be made on the second legislative day after
25 the calendar day on which the Member making the

1 motion announces to the House his or her intention
2 to do so.

3 (3) CONSIDERATION OF SECOND RESOLUTION
4 NOT IN ORDER.—It shall not be in order in either
5 the House of Representatives or the Senate to con-
6 sider a joint resolution (other than a joint resolution
7 received from the other House), if that House has
8 previously adopted a joint resolution under this sec-
9 tion.

10 (d) RULES OF HOUSE OF REPRESENTATIVES AND
11 SENATE.—This section is enacted by the Congress—

12 (1) as an exercise of the rulemaking power of
13 the House of Representatives and the Senate, re-
14 spectively, and as such is deemed a part of the rules
15 of each House, respectively, and such procedures su-
16 percede other rules only to the extent that they are
17 inconsistent with such other rules; and

18 (2) with the full recognition of the constitu-
19 tional right of either House to change the rules (so
20 far as relating to the procedures of that House) at
21 any time, in the same manner, and to the same ex-
22 tent as any other rule of that House.

23 **SEC. 126. INCREASED TRANSPARENCY.**

24 The Trade Representative shall seek the adoption by
25 the Ministerial Conference and General Council of proce-

1 dures that will ensure broader application of the principle
2 of transparency and clarification of the costs and benefits
3 of trade policy actions, through the observance of open
4 and equitable procedures in trade matters by the Ministe-
5 rial Conference and the General Council, and by the dis-
6 pute settlement panels and the Appellate Body under the
7 Dispute Settlement Understanding.

8 **SEC. 127. ACCESS TO THE WTO DISPUTE SETTLEMENT**
9 **PROCESS.**

10 (a) IN GENERAL.—Whenever the United States is a
11 party before a dispute settlement panel established pursu-
12 ant to Article 6 of the Dispute Settlement Understanding,
13 the Trade Representative shall, at each stage of the pro-
14 ceeding before the panel or the Appellate Body, consult
15 with the appropriate congressional committees, the peti-
16 tioner (if any) under section 302(a) of the Trade Act of
17 1974 (19 U.S.C. 2412) with respect to the matter that
18 is the subject of the proceeding, and relevant private sec-
19 tor advisory committees established under section 135 of
20 the Trade Act of 1974 (19 U.S.C. 2155), and shall con-
21 sider the views of representatives of appropriate interested
22 private sector and nongovernmental organizations con-
23 cerning the matter.

1 (b) NOTICE AND PUBLIC COMMENT.—In any pro-
2 ceeding described in subsection (a), the Trade Representa-
3 tive shall—

4 (1) promptly after requesting the establishment
5 of a panel, or receiving a request from another WTO
6 member country for the establishment of a panel,
7 publish a notice in the Federal Register—

8 (A) identifying the initial parties to the
9 dispute,

10 (B) setting forth the major issues raised
11 by the country requesting the establishment of
12 a panel and the legal basis of the complaint,

13 (C) identifying the specific measures, in-
14 cluding any State or Federal law cited in the
15 request for establishment of the panel, and

16 (D) seeking written comments from the
17 public concerning the issues raised in the dis-
18 pute; and

19 (2) take into account any advice received from
20 appropriate congressional committees and relevant
21 private sector advisory committees referred to in
22 subsection (a), and written comments received pur-
23 suant to paragraph (1)(D), in preparing United
24 States submissions to the panel or the Appellate
25 Body.

1 (c) ACCESS TO DOCUMENTS.—In each proceeding de-
2 scribed in subsection (a), the Trade Representative shall—

3 (1) make written submissions by the United
4 States referred to in subsection (b) available to the
5 public promptly after they are submitted to the
6 panel or Appellate Body, except that the Trade Rep-
7 resentative is authorized to withhold from disclosure
8 any information contained in such submissions iden-
9 tified by the provider of the information as propri-
10 etary information or information treated as con-
11 fidential by a foreign government;

12 (2) request each other party to the dispute to
13 permit the Trade Representative to make that par-
14 ty's written submissions to the panel or the Appel-
15 late Body available to the public; and

16 (3) make each report of the panel or the Appel-
17 late Body available to the public promptly after it is
18 circulated to WTO members, and inform the public
19 of such availability.

20 (d) REQUESTS FOR NONCONFIDENTIAL SUM-
21 MARIES.—In any dispute settlement proceeding conducted
22 pursuant to the Dispute Settlement Understanding, the
23 Trade Representative shall request each party to the dis-
24 pute to provide nonconfidential summaries of its written
25 submissions, if that party has not made its written sub-

1 missions public, and shall make those summaries available
2 to the public promptly after receiving them.

3 (e) PUBLIC FILE.—The Trade Representative shall
4 maintain a file accessible to the public on each dispute
5 settlement proceeding to which the United States is a
6 party that is conducted pursuant to the Dispute Settle-
7 ment Understanding. The file shall include all United
8 States submissions in the proceeding and a listing of any
9 submissions to the Trade Representative from the public
10 with respect to the proceeding, as well as the report of
11 the dispute settlement panel and the report of the Appel-
12 late Body.

13 (f) CONFORMING AMENDMENT.—Section
14 135(a)(1)(B) of the Trade Act of 1974 (19 U.S.C.
15 2155(a)(1)(B)) is amended to read as follows:

16 “(B) the operation of any trade agreement
17 once entered into, including preparation for dis-
18 pute settlement panel proceedings to which the
19 United States is a party; and”.

20 **SEC. 128. ADVISORY COMMITTEE PARTICIPATION.**

21 Section 135(b)(1) of the Trade Act of 1974 (19
22 U.S.C. 2155(b)(1)) is amended by inserting “nongovern-
23 mental environmental and conservation organizations,”
24 after “retailers,”.

1 **SEC. 129. ADMINISTRATIVE ACTION FOLLOWING WTO**
2 **PANEL REPORTS.**

3 (a) ACTION BY UNITED STATES INTERNATIONAL
4 TRADE COMMISSION.—

5 (1) ADVISORY REPORT.—If a dispute settlement
6 panel finds in an interim report under Article 15 of
7 the Dispute Settlement Understanding, or the Ap-
8 pellate Body finds in a report under Article 17 of
9 that Understanding, that an action by the Inter-
10 national Trade Commission in connection with a
11 particular proceeding is not in conformity with the
12 obligations of the United States under the Anti-
13 dumping Agreement, the Safeguards Agreement, or
14 the Agreement on Subsidies and Countervailing
15 Measures, the Trade Representative may request the
16 Commission to issue an advisory report on whether
17 title VII of the Tariff Act of 1930 or title II of the
18 Trade Act of 1974, as the case may be, permits the
19 Commission to take steps in connection with the
20 particular proceeding that would render its action
21 not inconsistent with the findings of the panel or the
22 Appellate Body concerning those obligations. The
23 Trade Representative shall notify the congressional
24 committees of such request.

1 (2) TIME LIMITS FOR REPORT.—The Commis-
2 sion shall transmit its report under paragraph (1) to
3 the Trade Representative—

4 (A) in the case of an interim report de-
5 scribed in paragraph (1), within 30 calendar
6 days after the Trade Representative requests
7 the report; and

8 (B) in the case of a report of the Appellate
9 Body, within 21 calendar days after the Trade
10 Representative requests the report.

11 (3) CONSULTATIONS ON REQUEST FOR COMMIS-
12 SION DETERMINATION.—If a majority of the Com-
13 missioners issues an affirmative report under para-
14 graph (1), the Trade Representative shall consult
15 with the congressional committees concerning the
16 matter.

17 (4) COMMISSION DETERMINATION.—Notwith-
18 standing any provision of the Tariff Act of 1930 or
19 title II of the Trade Act of 1974, if a majority of
20 the Commissioners issues an affirmative report
21 under paragraph (1), the Commission, upon the
22 written request of the Trade Representative, shall
23 issue a determination in connection with the particu-
24 lar proceeding that would render the Commission's
25 action described in paragraph (1) not inconsistent

1 with the findings of the panel or Appellate Body.
2 The Commission shall issue its determination not
3 later than 120 days after the request from the
4 Trade Representative is made.

5 (5) CONSULTATIONS ON IMPLEMENTATION OF
6 COMMISSION DETERMINATION.—The Trade Rep-
7 resentative shall consult with the congressional com-
8 mittees before the Commission's determination
9 under paragraph (4) is implemented.

10 (6) REVOCATION OF ORDER.—If, by virtue of
11 the Commission's determination under paragraph
12 (4), an antidumping or countervailing duty order
13 with respect to some or all of the imports that are
14 subject to the action of the Commission described in
15 paragraph (1) is no longer supported by an affirma-
16 tive Commission determination under title VII of the
17 Tariff Act of 1930 or this subsection, the Trade
18 Representative may, after consulting with the con-
19 gressional committees under paragraph (5), direct
20 the administering authority to revoke the antidump-
21 ing or countervailing duty order in whole or in part.

22 (7) MODIFICATION OF ACTION UNDER TITLE II
23 OF TRADE ACT OF 1974.—Section 204(b) of the
24 Trade Act of 1974 (19 U.S.C. 2254(b)) is amended
25 by adding at the end the following new paragraph:

1 “(3) Notwithstanding paragraph (1), the Presi-
2 dent may, after receipt of a Commission determina-
3 tion under section 129(a)(4) of the Uruguay Round
4 Agreements Act and consulting with the Committee
5 on Ways and Means of the House of Representatives
6 and the Committee on Finance of the Senate, re-
7 duce, modify, or terminate action taken under sec-
8 tion 203.”.

9 (b) ACTION BY ADMINISTERING AUTHORITY.—

10 (1) CONSULTATIONS WITH ADMINISTERING AU-
11 THORITY AND CONGRESSIONAL COMMITTEES.—

12 Promptly after a report by a dispute settlement
13 panel or the Appellate body is issued that contains
14 findings that an action by the administering author-
15 ity in a proceeding under title VII of the Tariff Act
16 of 1930 is not in conformity with the obligations of
17 the United States under the Antidumping Agree-
18 ment or the Agreement on Subsidies and Counter-
19 vailing Measures, the Trade Representative shall
20 consult with the administering authority and the
21 congressional committees on the matter.

22 (2) DETERMINATION BY ADMINISTERING AU-
23 THORITY.—Notwithstanding any provision of the
24 Tariff Act of 1930, the administering authority
25 shall, within 180 days after receipt of a written re-

1 quest from the Trade Representative, issue a deter-
2 mination in connection with the particular proceed-
3 ing that would render the administering authority's
4 action described in paragraph (1) not inconsistent
5 with the findings of the panel or the Appellate Body.

6 (3) CONSULTATIONS BEFORE IMPLEMENTA-
7 TION.—Before the administering authority imple-
8 ments any determination under paragraph (2), the
9 Trade Representative shall consult with the admin-
10 istering authority and the congressional committees
11 with respect to such determination.

12 (4) IMPLEMENTATION OF DETERMINATION.—
13 The Trade Representative may, after consulting with
14 the administering authority and the congressional
15 committees under paragraph (3), direct the admin-
16 istering authority to implement, in whole or in part,
17 the determination made under paragraph (2).

18 (c) EFFECTS OF DETERMINATIONS; NOTICE OF IM-
19 PLEMENTATION.—

20 (1) EFFECTS OF DETERMINATIONS.—Deter-
21 minations concerning title VII of the Tariff Act of
22 1930 that are implemented under this section shall
23 apply with respect to unliquidated entries of the sub-
24 ject merchandise (as defined in section 771 of that

1 Act) that are entered, or withdrawn from warehouse,
2 for consumption on or after—

3 (A) in the case of a determination by the
4 Commission under subsection (a)(4), the date
5 on which the Trade Representative directs the
6 administering authority under subsection (a)(6)
7 to revoke an order pursuant to that determina-
8 tion, and

9 (B) in the case of a determination by the
10 administering authority under subsection
11 (b)(2), the date on which the Trade Represent-
12 ative directs the administering authority under
13 subsection (b)(4) to implement that determina-
14 tion.

15 (2) NOTICE OF IMPLEMENTATION.—

16 (A) The administering authority shall pub-
17 lish in the Federal Register notice of the imple-
18 mentation of any determination made under
19 this section with respect to title VII of the Tar-
20 iff Act of 1930.

21 (B) The Trade Representative shall pub-
22 lish in the Federal Register notice of the imple-
23 mentation of any determination made under
24 this section with respect to title II of the Trade
25 Act of 1974.

1 (d) OPPORTUNITY FOR COMMENT BY INTERESTED
2 PARTIES.—Prior to issuing a determination under this
3 section, the administering authority or the Commission,
4 as the case may be, shall provide interested parties with
5 an opportunity to submit written comments and, in appro-
6 priate cases, may hold a hearing, with respect to the deter-
7 mination.

8 (e) JUDICIAL OR BINATIONAL PANEL REVIEW.—

9 (1) REVIEW OF DETERMINATIONS ON
10 RECORD.—Section 516A(a)(2) of the Tariff Act of
11 1930 (19 U.S.C. 1516a(a)(2)) is amended—

12 (A) in subparagraph (A)(i)—

13 (i) in subclause (I) by striking “(B),
14 or” and inserting “(B)”, and

15 (ii) by adding after subclause (II) the
16 following:

17 “(III) notice of the implementa-
18 tion of any determination described in
19 clause (vii) of subparagraph (B), or”;
20 and

21 (B) in subparagraph (B), by adding at the
22 end the following new clause:

23 “(vii) A determination by the admin-
24 istering authority or the Commission under
25 section 129 of the Uruguay Round Agree-

1 ments Act concerning a determination
2 under title VII of the Tariff Act of 1930.”.

3 (2) TIME LIMITS FOR CASES INVOLVING FREE
4 TRADE AREA COUNTRIES.—Section 516A(a)(5) of
5 the Tariff Act of 1930 (19 U.S.C. 1516a(a)(5)) is
6 amended by adding at the end the following new
7 subparagraph:

8 “(E) For a determination described in
9 clause (vii) of paragraph (2)(B), the 31st day
10 after the date on which notice of the implemen-
11 tation of the determination is published in the
12 Federal Register.”.

13 (3) REVIEW OF CASES INVOLVING FREE TRADE
14 AREA COUNTRY MERCHANDISE.—Section
15 516A(g)(8)(A)(i) of the Tariff Act of 1930 (19
16 U.S.C. 1516a(g)(8)(A)(i)) is amended by striking
17 “subparagraph (A) or (B)” and inserting “subpara-
18 graph (A), (B), or (E)”.

19 **SEC. 130. EFFECTIVE DATE.**

20 This subtitle and the amendments made by this sub-
21 title take effect on the date on which the WTO Agreement
22 enters into force with respect to the United States.

1 **Subtitle D—Related Provisions**

2 **SEC. 131. WORKING PARTY ON WORKER RIGHTS.**

3 (a) IN GENERAL.—The President shall seek the es-
4 tablishment in the GATT 1947, and, upon entry into force
5 of the WTO Agreement with respect to the United States,
6 in the WTO, of a working party to examine the relation-
7 ship of internationally recognized worker rights, as defined
8 in section 502(a)(4) of the Trade Act of 1974, to the arti-
9 cles, objectives, and related instruments of the GATT
10 1947 and of the WTO, respectively.

11 (b) OBJECTIVES OF WORKING PARTY.—The objec-
12 tives of the United States for the working party described
13 in subsection (a) are to—

14 (1) explore the linkage between international
15 trade and internationally recognized worker rights,
16 as defined in section 502(a)(4) of the Trade Act of
17 1974, taking into account differences in the level of
18 development among countries;

19 (2) examine the effects on international trade of
20 the systematic denial of such rights;

21 (3) consider ways to address such effects; and

22 (4) develop methods to coordinate the work pro-
23 gram of the working party with the International
24 Labor Organization.

1 (c) REPORT TO CONGRESS.—The President shall re-
2 port to the Congress, not later than 1 year after the date
3 of the enactment of this Act, on the progress made in es-
4 tablishing the working party under this section, and on
5 United States objectives with respect to the working par-
6 ty’s work program.

7 **SEC. 132. IMPLEMENTATION OF RULES OF ORIGIN WORK**
8 **PROGRAM.**

9 If the President enters into an agreement developed
10 under the work program described in Article 9 of the
11 Agreement on Rules of Origin referred to in section
12 101(d)(10), the President may implement United States
13 obligations under such an agreement under United States
14 law only pursuant to authority granted to the President
15 for that purpose by law enacted after the effective date
16 of this title.

17 **SEC. 133. MEMBERSHIP IN WTO OF BOYCOTTING COUN-**
18 **TRIES.**

19 It is the sense of the Congress that the Trade Rep-
20 resentative should vigorously oppose the admission into
21 the World Trade Organization of any country which,
22 through its laws, regulations, official policies, or govern-
23 mental practices, fosters, imposes, complies with, furthers,
24 or supports any boycott described in section 8(a) of the
25 Export Administration Act of 1979 (50 U.S.C. App.

1 2407(a)) (as in effect on August 20, 1994), including re-
2 quiring or encouraging entities within that country to
3 refuse to do business with persons who do not comply with
4 requests to take any action prohibited under that section.

5 **SEC. 134. AFRICA TRADE AND DEVELOPMENT POLICY.**

6 (a) DEVELOPMENT OF POLICY.—The President
7 should develop and implement a comprehensive trade and
8 development policy for the countries of Africa.

9 (b) REPORTS TO CONGRESS.—The President shall,
10 not later than 12 months after the date of the enactment
11 of this Act and annually thereafter for a period of 4 years,
12 submit to the Committee on Ways and Means and the
13 Committee on Foreign Affairs of the House of Representa-
14 tives, the Committee on Finance and the Committee on
15 Foreign Relations of the Senate, and other appropriate
16 committees of the Congress, a report on the steps taken
17 to carry out subsection (a).

18 **SEC. 135. OBJECTIVES FOR EXTENDED NEGOTIATIONS.**

19 (a) TRADE IN FINANCIAL SERVICES.—The principal
20 negotiating objective of the United States in the extended
21 negotiations on financial services to be conducted under
22 the auspices of the WTO is to seek to secure commit-
23 ments, from a wide range of commercially important de-
24 veloped and developing countries, to reduce or eliminate
25 barriers to the supply of financial services, including bar-

1 riers that deny national treatment or market access by re-
2 stricting the establishment or operation of financial serv-
3 ices providers, as the condition for the United States—

4 (1) offering commitments to provide national
5 treatment and market access in each of the financial
6 services subsectors, and

7 (2) making such commitments on a most-fa-
8 vored-nation basis.

9 (b) TRADE IN BASIC TELECOMMUNICATIONS SERV-
10 ICES.—The principal negotiating objective of the United
11 States in the extended negotiations on basic telecommuni-
12 cations services to be conducted under the auspices of the
13 WTO is to obtain the opening on nondiscriminatory terms
14 and conditions of foreign markets for basic telecommuni-
15 cations services through facilities-based competition or
16 through the resale of services on existing networks.

17 (c) TRADE IN CIVIL AIRCRAFT.—

18 (1) NEGOTIATIONS.—The principal negotiating
19 objectives of the United States in the extended nego-
20 tiations on trade in civil aircraft to be conducted
21 under the auspices of the WTO are—

22 (A) to obtain competitive opportunities for
23 United States exports in foreign markets sub-
24 stantially equivalent to those afforded to foreign
25 products in the United States,

1 (B) to obtain the reduction or elimination
2 of specific tariff and nontariff barriers, includ-
3 ing through expanded membership in the
4 Agreement on Trade in Civil Aircraft and in the
5 US–EC bilateral agreement for large civil air-
6 craft,

7 (C) to maintain vigorous and effective dis-
8 ciplines on subsidies practices with respect to
9 civil aircraft products under the Agreement on
10 Subsidies and Countervailing Measures referred
11 to in section 101(d)(12),

12 (D) to maintain the scope and coverage on
13 indirect support as specified in the US–EC bi-
14 lateral agreement on large civil aircraft, and

15 (E) to obtain increased transparency with
16 respect to foreign subsidy programs in the civil
17 aircraft sector, both through greater govern-
18 ment disclosure with respect to the use of tax-
19 payer moneys and higher financial disclosure
20 standards for companies receiving government
21 supports (including disclosure comparable to
22 that required under United States securities
23 laws).

24 (2) DEFINITIONS.—For purposes of paragraph
25 (1)—

1 (A) the term “civil aircraft” means those
2 products to which the Agreement on Trade in
3 Civil Aircraft applies,

4 (B) the term “large civil aircraft” has the
5 meaning given that term in Annex II to the
6 US–EC bilateral agreement,

7 (C) the term “indirect support” means in-
8 direct government support as defined in Annex
9 II to the US–EC bilateral agreement,

10 (D) the term “Agreement on Trade in
11 Civil Aircraft” means the Agreement on Trade
12 in Civil Aircraft approved by the Congress
13 under section 2 of the Trade Agreements Act of
14 1979, and

15 (E) the term “US–EC bilateral agree-
16 ment” means the Agreement Concerning the
17 Application of the GATT Agreement on Trade
18 in Civil Aircraft Between the European Eco-
19 nomic Community and the Government of the
20 United States of America on trade in large civil
21 aircraft, entered into on July 17, 1992.

1 **SEC. 136. REPEAL OF TAX ON IMPORTED PERFUMES; DRAW-**
2 **BACK OF TAX ON DISTILLED SPIRITS USED IN**
3 **PERFUME MANUFACTURE.**

4 (a) REPEAL OF TAX ON IMPORTED PERFUMES.—
5 Subsection (a) of section 5001 of the Internal Revenue
6 Code of 1986 is amended by striking paragraph (3) and
7 redesignating the following paragraphs accordingly.

8 (b) DRAWBACK OF TAX ON DISTILLED SPIRITS
9 USED IN PERFUME MANUFACTURE.—Sections 5131(a),
10 5132, 5134(c)(1), and 7652(g) of such Code are each
11 amended by striking “or flavoring extracts” and inserting
12 “flavoring extracts, or perfume”.

13 (c) CONFORMING AMENDMENTS.—

14 (1) Subsection (b) of section 5002 of such Code
15 is amended by striking paragraph (1) and redesignating the following paragraphs accordingly.

17 (2) Subsection (f) of section 5005 of such Code
18 is amended—

19 (A) by striking “section 5001(a)(6) and
20 (7)” in paragraph (3) and inserting “section
21 5001(a)(5) and (6)”, and

22 (B) by striking “section 5001(a)(5)” in
23 paragraph (4) and inserting “section
24 5001(a)(4)”.

25 (3) Subsection (b) of section 5007 of such Code
26 is amended to read as follows:

1 “(b) COLLECTION OF TAX ON IMPORTED DISTILLED
2 SPIRITS.—The internal revenue tax imposed by section
3 5001(a)(1) and (2) upon imported distilled spirits shall
4 be collected by the Secretary and deposited as internal rev-
5 enue collections, under such regulations as the Secretary
6 may prescribe. Section 5688 shall be applicable to the dis-
7 position of imported spirits.”.

8 (4) Paragraph (3) of section 5007(c) of such
9 Code is amended by striking “section 5001(a)(5),
10 (6), and (7)” and inserting “section 5001(a)(4), (5),
11 and (6)”.

12 (5) Paragraph (1) of section 5061(b) of such
13 Code is amended to read as follows:

14 “(1) section 5001(a)(4), (5), or (6),”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on January 1, 1995.

17 **SEC. 137. CERTAIN NONRUBBER FOOTWEAR.**

18 In the case of nonrubber footwear imported from
19 Brazil—

20 (1) which is subject to Treasury Decision 74-
21 233, dated September 9, 1974,

22 (2) which was entered, or withdrawn from
23 warehouse for consumption, on or before October 28,
24 1981, and

1 (3) with respect to which entries are unliqui-
2 dated on the date of the enactment of this Act,
3 countervailing duties shall be assessed at rates equal to
4 the amount of the cash deposit of the estimated counter-
5 vailing duties required on such footwear at the time of
6 entry or withdrawal from warehouse for consumption. In-
7 terest on underpayments of amounts required to be depos-
8 ited as countervailing duties shall be paid in accordance
9 with section 778 of the Tariff Act of 1930 (19 U.S.C.
10 1677g).

11 **SEC. 138. EFFECTIVE DATE.**

12 (a) IN GENERAL.—Except as provided in section
13 136(d) and subsection (b) of this section, this subtitle and
14 the amendments made by this subtitle take effect on the
15 date of the enactment of this Act.

16 (b) SECTIONS 132 AND 135.—Sections 132 and 135
17 take effect on the date on which the WTO Agreement en-
18 ters into force with respect to the United States.

19 **TITLE II—ANTIDUMPING AND**
20 **COUNTERVAILING DUTY PRO-**
21 **VISIONS**

22 **SEC. 201. REFERENCE.**

23 Except as otherwise expressly provided, whenever in
24 this title an amendment or repeal is expressed in terms
25 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a
2 section or other provision of the Tariff Act of 1930.

3 **Subtitle A—General Provisions**

4 **SEC. 211. ACTION WITH RESPECT TO PETITIONS.**

5 (a) COUNTERVAILING DUTY INVESTIGATIONS.—Sec-
6 tion 702(b) (19 U.S.C. 1671a(b)) is amended—

7 (1) in paragraph (3) by striking “subsection
8 702(b)(1)” and inserting “paragraph (1)”, and

9 (2) by adding at the end the following:

10 “(4) ACTION WITH RESPECT TO PETITIONS.—

11 “(A) NOTIFICATION OF GOVERNMENTS.—

12 Upon receipt of a petition filed under para-
13 graph (1), the administering authority shall—

14 “(i) notify the government of any ex-
15 porting country named in the petition by
16 delivering a public version of the petition
17 to an appropriate representative of such
18 country; and

19 “(ii) provide the government of any
20 exporting country named in the petition
21 that is a Subsidies Agreement country an
22 opportunity for consultations with respect
23 to the petition.

24 “(B) ACCEPTANCE OF COMMUNICA-
25 TIONS.—The administering authority shall not

1 accept any unsolicited oral or written commu-
2 nication from any person other than an inter-
3 ested party described in section 771(9) (C),
4 (D), (E), (F), or (G) before the administering
5 authority makes its decision whether to initiate
6 an investigation, except as provided in subpara-
7 graph (A)(ii) and subsection (c)(4)(D), and ex-
8 cept for inquiries regarding the status of the
9 administering authority's consideration of the
10 petition.

11 “(C) NONDISCLOSURE OF CERTAIN INFOR-
12 MATION.—The administering authority and the
13 Commission shall not disclose information with
14 regard to any draft petition submitted for re-
15 view and comment before it is filed under para-
16 graph (1).”.

17 (b) ANTIDUMPING INVESTIGATIONS.—Section 732(b)
18 (19 U.S.C. 1673a(b)) is amended by adding at the end
19 the following:

20 “(3) ACTION WITH RESPECT TO PETITIONS.—

21 “(A) NOTIFICATION OF GOVERNMENTS.—
22 Upon receipt of a petition filed under para-
23 graph (1), the administering authority shall no-
24 tify the government of any exporting country
25 named in the petition by delivering a public ver-

1 sion of the petition to an appropriate represent-
2 ative of such country.

3 “(B) ACCEPTANCE OF COMMUNICA-
4 TIONS.—The administering authority shall not
5 accept any unsolicited oral or written commu-
6 nication from any person other than an inter-
7 ested party described in section 771(9) (C),
8 (D), (E), (F), or (G) before the administering
9 authority makes its decision whether to initiate
10 an investigation, except as provided in sub-
11 section (c)(4)(D), and except for inquiries re-
12 garding the status of the administering
13 authority’s consideration of the petition.

14 “(C) NONDISCLOSURE OF CERTAIN INFOR-
15 MATION.—The administering authority and the
16 Commission shall not disclose information with
17 regard to any draft petition submitted for re-
18 view and comment before it is filed under para-
19 graph (1).”.

20 **SEC. 212. PETITION AND PRELIMINARY DETERMINATION.**

21 (a) GENERAL REQUIREMENTS.—

22 (1) COUNTERVAILING DUTY PETITION.—Section
23 702(c) (19 U.S.C. 1671a(c)) is amended to read as
24 follows:

25 “(c) PETITION DETERMINATION.—

1 “(1) IN GENERAL.—

2 “(A) TIME FOR INITIAL DETERMINA-
3 TION.—Except as provided in subparagraph
4 (B), within 20 days after the date on which a
5 petition is filed under subsection (b), the ad-
6 ministering authority shall—

7 “(i) after examining, on the basis of
8 sources readily available to the administer-
9 ing authority, the accuracy and adequacy
10 of the evidence provided in the petition, de-
11 termine whether the petition alleges the
12 elements necessary for the imposition of a
13 duty under section 701(a) and contains in-
14 formation reasonably available to the peti-
15 tioner supporting the allegations, and

16 “(ii) determine if the petition has
17 been filed by or on behalf of the industry.

18 “(B) EXTENSION OF TIME.—In any case
19 in which the administering authority is required
20 to poll or otherwise determine support for the
21 petition by the industry under paragraph
22 (4)(D), the administering authority may, in ex-
23 ceptional circumstances, apply subparagraph
24 (A) by substituting ‘a maximum of 40 days’ for
25 ‘20 days’.

1 “(C) TIME LIMITS WHERE PETITION IN-
2 VOLVES SAME MERCHANDISE AS AN ORDER
3 THAT HAS BEEN REVOKED.—If a petition is
4 filed under this section with respect to mer-
5 chandise that was the subject merchandise of—

6 “(i) a countervailing duty order that
7 was revoked under section 751(d) in the
8 24 months preceding the date the petition
9 is filed, or

10 “(ii) a suspended investigation that
11 was terminated under section 751(d) in the
12 24 months preceding the date the petition
13 is filed,

14 the administering authority and the Commis-
15 sion shall, to the maximum extent practicable,
16 expedite any investigation initiated under this
17 section with respect to the petition.

18 “(2) AFFIRMATIVE DETERMINATIONS.—If the
19 determinations under clauses (i) and (ii) of para-
20 graph (1)(A) are affirmative, the administering au-
21 thority shall initiate an investigation to determine
22 whether a countervailable subsidy is being provided
23 with respect to the subject merchandise.

24 “(3) NEGATIVE DETERMINATIONS.—If the de-
25 termination under clause (i) or (ii) of paragraph

1 (1)(A) is negative, the administering authority shall
2 dismiss the petition, terminate the proceeding, and
3 notify the petitioner in writing of the reasons for the
4 determination.

5 “(4) DETERMINATION OF INDUSTRY SUP-
6 PORT.—

7 “(A) GENERAL RULE.—For purposes of
8 this subsection, the administering authority
9 shall determine that the petition has been filed
10 by or on behalf of the industry, if—

11 “(i) the domestic producers or work-
12 ers who support the petition account for at
13 least 25 percent of the total production of
14 the domestic like product, and

15 “(ii) the domestic producers or work-
16 ers who support the petition account for
17 more than 50 percent of the production of
18 the domestic like product produced by that
19 portion of the industry expressing support
20 for or opposition to the petition.

21 “(B) CERTAIN POSITIONS DIS-
22 REGARDED.—

23 “(i) PRODUCERS RELATED TO FOR-
24 EIGN PRODUCERS.—In determining indus-
25 try support under subparagraph (A), the

1 administering authority shall disregard the
2 position of domestic producers who oppose
3 the petition, if such producers are related
4 to foreign producers, as defined in section
5 771(4)(B)(ii), unless such domestic pro-
6 ducers demonstrate that their interests as
7 domestic producers would be adversely af-
8 fected by the imposition of a countervailing
9 duty order.

10 “(ii) PRODUCERS WHO ARE IMPORT-
11 ERS.—The administering authority may
12 disregard the position of domestic produc-
13 ers of a domestic like product who are im-
14 porters of the subject merchandise.

15 “(C) SPECIAL RULE FOR REGIONAL INDUS-
16 TRIES.—If the petition alleges that the industry
17 is a regional industry, the administering author-
18 ity shall determine whether the petition has
19 been filed by or on behalf of the industry by ap-
20 plying subparagraph (A) on the basis of produc-
21 tion in the region.

22 “(D) POLLING THE INDUSTRY.—If the pe-
23 tition does not establish support of domestic
24 producers or workers accounting for more than
25 50 percent of the total production of the domes-

1 tic like product, the administering authority
2 shall—

3 “(i) poll the industry or rely on other
4 information in order to determine if there
5 is support for the petition as required by
6 subparagraph (A), or

7 “(ii) if there is a large number of pro-
8 ducers in the industry, the administering
9 authority may determine industry support
10 for the petition by using any statistically
11 valid sampling method to poll the industry.

12 “(E) COMMENTS BY INTERESTED PAR-
13 TIES.—Before the administering authority
14 makes a determination with respect to initiating
15 an investigation, any person who would qualify
16 as an interested party under section 771(9) if
17 an investigation were initiated, may submit
18 comments or information on the issue of indus-
19 try support. After the administering authority
20 makes a determination with respect to initiating
21 an investigation, the determination regarding
22 industry support shall not be reconsidered.

23 “(5) DEFINITION OF DOMESTIC PRODUCERS OR
24 WORKERS.—For purposes of this subsection, the
25 term ‘domestic producers or workers’ means those

1 interested parties who are eligible to file a petition
2 under subsection (b)(1)(A).”.

3 (2) ANTIDUMPING DUTY PETITION.—Section
4 732(c) (19 U.S.C. 1673a(c)) is amended to read as
5 follows:

6 “(c) PETITION DETERMINATION.—

7 “(1) IN GENERAL.—

8 “(A) TIME FOR INITIAL DETERMINA-
9 TION.—Except as provided in subparagraph
10 (B), within 20 days after the date on which a
11 petition is filed under subsection (b), the ad-
12 ministering authority shall—

13 “(i) after examining, on the basis of
14 sources readily available to the administer-
15 ing authority, the accuracy and adequacy
16 of the evidence provided in the petition, de-
17 termine whether the petition alleges the
18 elements necessary for the imposition of a
19 duty under section 731 and contains infor-
20 mation reasonably available to the peti-
21 tioner supporting the allegations, and

22 “(ii) determine if the petition has
23 been filed by or on behalf of the industry.

24 “(B) EXTENSION OF TIME.—In any case
25 in which the administering authority is required

1 to poll or otherwise determine support for the
2 petition by the industry under paragraph
3 (4)(D), the administering authority may, in ex-
4 ceptional circumstances, apply subparagraph
5 (A) by substituting ‘a maximum of 40 days’ for
6 ‘20 days’.

7 “(C) TIME LIMITS WHERE PETITION IN-
8 VOLVES SAME MERCHANDISE AS AN ORDER
9 THAT HAS BEEN REVOKED.—If a petition is
10 filed under this section with respect to mer-
11 chandise that was the subject merchandise of—

12 “(i) an antidumping duty order or
13 finding that was revoked under section
14 751(d) in the 24 months preceding the
15 date the petition is filed, or

16 “(ii) a suspended investigation that
17 was terminated under section 751(d) in the
18 24 months preceding the date the petition
19 is filed,

20 the administering authority and the Commis-
21 sion shall, to the maximum extent practicable,
22 expedite any investigation initiated under this
23 section with respect to the petition.

24 “(2) AFFIRMATIVE DETERMINATIONS.—If the
25 determinations under clauses (i) and (ii) of para-

1 graph (1)(A) are affirmative, the administering au-
2 thority shall initiate an investigation to determine
3 whether the subject merchandise is being, or is likely
4 to be, sold in the United States at less than its fair
5 value.

6 “(3) NEGATIVE DETERMINATIONS.—If the de-
7 termination under clause (i) or (ii) of paragraph
8 (1)(A) is negative, the administering authority shall
9 dismiss the petition, terminate the proceeding, and
10 notify the petitioner in writing of the reasons for the
11 determination.

12 “(4) DETERMINATION OF INDUSTRY SUP-
13 PORT.—

14 “(A) GENERAL RULE.—For purposes of
15 this subsection, the administering authority
16 shall determine that the petition has been filed
17 by or on behalf of the industry, if—

18 “(i) the domestic producers or work-
19 ers who support the petition account for at
20 least 25 percent of the total production of
21 the domestic like product, and

22 “(ii) the domestic producers or work-
23 ers who support the petition account for
24 more than 50 percent of the production of
25 the domestic like product produced by that

1 portion of the industry expressing support
2 for or opposition to the petition.

3 “(B) CERTAIN POSITIONS DIS-
4 REGARDED.—

5 “(i) PRODUCERS RELATED TO FOR-
6 EIGN PRODUCERS.—In determining indus-
7 try support under subparagraph (A), the
8 administering authority shall disregard the
9 position of domestic producers who oppose
10 the petition, if such producers are related
11 to foreign producers, as defined in section
12 771(4)(B)(ii), unless such domestic pro-
13 ducers demonstrate that their interests as
14 domestic producers would be adversely af-
15 fected by the imposition of an antidumping
16 duty order.

17 “(ii) PRODUCERS WHO ARE IMPORT-
18 ERS.—The administering authority may
19 disregard the position of domestic produc-
20 ers of a domestic like product who are im-
21 porters of the subject merchandise.

22 “(C) SPECIAL RULE FOR REGIONAL INDUS-
23 TRIES.—If the petition alleges the industry is a
24 regional industry, the administering authority
25 shall determine whether the petition has been

1 filed by or on behalf of the industry by applying
2 subparagraph (A) on the basis of production in
3 the region.

4 “(D) POLLING THE INDUSTRY.—If the pe-
5 tition does not establish support of domestic
6 producers or workers accounting for more than
7 50 percent of the total production of the domes-
8 tic like product, the administering authority
9 shall—

10 “(i) poll the industry or rely on other
11 information in order to determine if there
12 is support for the petition as required by
13 subparagraph (A), or

14 “(ii) if there is a large number of pro-
15 ducers in the industry, the administering
16 authority may determine industry support
17 for the petition by using any statistically
18 valid sampling method to poll the industry.

19 “(E) COMMENTS BY INTERESTED PAR-
20 TIES.—Before the administering authority
21 makes a determination with respect to initiating
22 an investigation, any person who would qualify
23 as an interested party under section 771(9) if
24 an investigation were initiated, may submit
25 comments or information on the issue of indus-

1 try support. After the administering authority
2 makes a determination with respect to initiating
3 an investigation, the determination regarding
4 industry support shall not be reconsidered.

5 “(5) DEFINITION OF DOMESTIC PRODUCERS OR
6 WORKERS.—For purposes of this subsection, the
7 term ‘domestic producers or workers’ means those
8 interested parties who are eligible to file a petition
9 under subsection (b)(1)(A).”.

10 (b) DETERMINATION BY THE COMMISSION OF REA-
11 SONABLE INDICATION OF INJURY; PRELIMINARY DETER-
12 MINATION BY THE ADMINISTERING AUTHORITY.—

13 (1) COUNTERVAILING DUTY INVESTIGATIONS.—

14 (A) Section 703(a) (19 U.S.C. 1671b(a))
15 is amended to read as follows:

16 “(a) DETERMINATION BY COMMISSION OF REASON-
17 ABLE INDICATION OF INJURY.—

18 “(1) GENERAL RULE.—Except in the case of a
19 petition dismissed by the administering authority
20 under section 702(c)(3), the Commission, within the
21 time specified in paragraph (2), shall determine,
22 based on the information available to it at the time
23 of the determination, whether there is a reasonable
24 indication that—

25 “(A) an industry in the United States—

1 “(i) is materially injured, or

2 “(ii) is threatened with material in-
3 jury, or

4 “(B) the establishment of an industry in
5 the United States is materially retarded,

6 by reason of imports of the subject merchandise and
7 that imports of the subject merchandise are not neg-
8 ligible. If the Commission finds that imports of the
9 subject merchandise are negligible or otherwise
10 makes a negative determination under this para-
11 graph, the investigation shall be terminated.

12 “(2) TIME FOR COMMISSION DETERMINA-
13 TION.—The Commission shall make the determina-
14 tion described in paragraph (1)—

15 “(A) in the case of a petition filed under
16 section 702(b)—

17 “(i) within 45 days after the date on
18 which the petition is filed, or

19 “(ii) if the time has been extended
20 pursuant to section 702(c)(1)(B), within
21 25 days after the date on which the Com-
22 mission receives notice from the admin-
23 istering authority of initiation of the inves-
24 tigation, and

1 “(B) in the case of an investigation initi-
2 ated under section 702(a), within 45 days after
3 the date on which the Commission receives no-
4 tice from the administering authority that an
5 investigation has been initiated under such sec-
6 tion.”.

7 (B) Section 705(b)(1) (19 U.S.C.
8 1671d(b)(1)) is amended by adding at the end
9 the following: “If the Commission determines
10 that imports of the subject merchandise are
11 negligible, the investigation shall be termi-
12 nated.”.

13 (C) Section 703(b) (19 U.S.C. 1671b(b))
14 is amended—

15 (i) in paragraph (1)—

16 (I) by striking “85 days after the
17 date on which the petition is filed
18 under section 702(b)” and inserting
19 “65 days after the date on which the
20 administering authority initiates an
21 investigation under section 702(c)”;

22 (II) by striking “best informa-
23 tion” and inserting “information”;
24 and

1 (III) by striking the last sen-
2 tence; and

3 (ii) in paragraph (2), by striking “85
4 days after the date on which the petition
5 is filed under section 702(b)” and inserting
6 “65 days after the date on which the ad-
7 ministering authority initiates an investiga-
8 tion under section 702(c)”.

9 (D) Section 703(c)(1) (19 U.S.C.
10 1671b(c)) is amended by striking “150th day
11 after the date on which a petition is filed under
12 section 702(b)” and inserting “130th day after
13 the date on which the administering authority
14 initiates an investigation under section 702(c)”.

15 (E) Section 702(b)(3) (19 U.S.C.
16 1671a(b)(3)) is amended by striking “twenty
17 days” and inserting “5 days after the date on
18 which the administering authority initiates an
19 investigation under subsection (c),”.

20 (F) Section 703(f) (19 U.S.C. 1671b(f)) is
21 amended to read as follows:

22 “(f) NOTICE OF DETERMINATION.—Whenever the
23 Commission or the administering authority makes a deter-
24 mination under this section, the Commission or the admin-
25 istering authority, as the case may be, shall notify the pe-

1 titioner, and other parties to the investigation, and the
2 Commission or the administering authority (whichever is
3 appropriate) of its determination. The administering au-
4 thority shall include with such notification the facts and
5 conclusions on which its determination is based. Not later
6 than 5 days after the date on which the determination is
7 required to be made under subsection (a)(2), the Commis-
8 sion shall transmit to the administering authority the facts
9 and conclusions on which its determination is based.”.

10 (2) ANTIDUMPING DUTY INVESTIGATIONS.—

11 (A) Section 733(a) (19 U.S.C. 1673b(a))

12 is amended to read as follows:

13 “(a) DETERMINATION BY COMMISSION OF REASON-
14 ABLE INDICATION OF INJURY.—

15 “(1) GENERAL RULE.—Except in the case of a
16 petition dismissed by the administering authority
17 under section 732(c)(3), the Commission, within the
18 time specified in paragraph (2), shall determine,
19 based on the information available to it at the time
20 of the determination, whether there is a reasonable
21 indication that—

22 “(A) an industry in the United States—

23 “(i) is materially injured, or

24 “(ii) is threatened with material in-
25 jury, or

1 “(B) the establishment of an industry in
2 the United States is materially retarded,
3 by reason of imports of the subject merchandise and
4 that imports of the subject merchandise are not neg-
5 ligible. If the Commission finds that imports of the
6 subject merchandise are negligible or otherwise
7 makes a negative determination under this para-
8 graph, the investigation shall be terminated.

9 “(2) TIME FOR COMMISSION DETERMINA-
10 TION.—The Commission shall make the determina-
11 tion described in paragraph (1)—

12 “(A) in the case of a petition filed under
13 section 732(b)—

14 “(i) within 45 days after the date on
15 which the petition is filed, or

16 “(ii) if the time has been extended
17 pursuant to section 732(c)(1)(B), within
18 25 days after the date on which the Com-
19 mission receives notice from the admin-
20 istering authority of initiation of the inves-
21 tigation, and

22 “(B) in the case of an investigation initi-
23 ated under section 732(a), within 45 days after
24 the date on which the Commission receives no-
25 tice from the administering authority that an

1 investigation has been initiated under such sec-
2 tion.”.

3 (B) Section 735(b)(1) (19 U.S.C.
4 1673d(b)(1)) is amended by adding at the end
5 the following: “If the Commission determines
6 that imports of the subject merchandise are
7 negligible, the investigation shall be termi-
8 nated.”.

9 (C) Section 733(b)(1) (19 U.S.C.
10 1673b(b)(1)) is amended—

11 (i) in subparagraph (A)—

12 (I) by striking “160 days after
13 the date on which a petition is filed
14 under section 732(b)” and inserting
15 “140 days after the date on which the
16 administering authority initiates an
17 investigation under section 732(c)”;
18 and

19 (II) by striking “best informa-
20 tion” and inserting “information”;
21 and

22 (ii) in subparagraph (B)—

23 (I) by striking “120” and insert-
24 ing “100”;

1 (II) by striking “160” and in-
2 sserting “140”;

3 (III) by striking “100” and in-
4 sserting “80”; and

5 (IV) by striking “160” and in-
6 sserting “140”.

7 (D) Section 733(c)(1) (19 U.S.C.
8 1673b(c)(1)) is amended by striking “210th
9 day after the date on which a petition is filed
10 under section 732(b)” and inserting “190th day
11 after the date on which the administering au-
12 thority initiates an investigation under section
13 732(c)”.

14 (E) Section 733(f) (19 U.S.C. 1673b(f)) is
15 amended to read as follows:

16 “(f) NOTICE OF DETERMINATION.—Whenever the
17 Commission or the administering authority makes a deter-
18 mination under this section, the Commission or the admin-
19 istering authority, as the case may be, shall notify the pe-
20 titioner, and other parties to the investigation, and the
21 Commission or the administering authority (whichever is
22 appropriate) of its determination. The administering au-
23 thority shall include with such notification the facts and
24 conclusions on which its determination is based. Not later
25 than 5 days after the date on which the determination is

1 required to be made under subsection (a)(2), the Commis-
2 sion shall transmit to the administering authority the facts
3 and conclusions on which its determination is based.”.

4 **SEC. 213. DE MINIMIS DUMPING MARGIN.**

5 (a) PRELIMINARY DETERMINATIONS.—Section
6 733(b) (19 U.S.C. 1673b(b)) is amended by adding at the
7 end the following new paragraph:

8 “(3) DE MINIMIS DUMPING MARGIN.—In mak-
9 ing a determination under this subsection, the ad-
10 ministering authority shall disregard any weighted
11 average dumping margin that is de minimis. For
12 purposes of the preceding sentence, a weighted aver-
13 age dumping margin is de minimis if the administer-
14 ing authority determines that it is less than 2 per-
15 cent ad valorem or the equivalent specific rate for
16 the subject merchandise.”.

17 (b) FINAL DETERMINATIONS.—Section 735(a) (19
18 U.S.C. 1673d(a)) is amended by adding at the end the
19 following new paragraph:

20 “(4) DE MINIMIS DUMPING MARGIN.—In mak-
21 ing a determination under this subsection, the ad-
22 ministering authority shall disregard any weighted
23 average dumping margin that is de minimis as de-
24 fined in section 733(b)(3).”.

1 **SEC. 214. CRITICAL CIRCUMSTANCES.**

2 (a) COUNTERVAILING DUTY INVESTIGATIONS.—

3 (1) PRELIMINARY DETERMINATIONS.—Section
4 703(e)(1) (19 U.S.C. 1671b(e)(1)) is amended—

5 (A) in the matter preceding subparagraph

6 (A) by striking “best information” and insert-
7 ing “information”; and

8 (B) by amending subparagraphs (A) and
9 (B) to read as follows:

10 “(A) the alleged countervailable subsidy is
11 inconsistent with the Subsidies Agreement, and

12 “(B) there have been massive imports of
13 the subject merchandise over a relatively short
14 period.”.

15 (2) FINAL DETERMINATIONS.—(A) Section
16 705(a)(2) (19 U.S.C. 1671d(a)(2)) is amended—

17 (i) in subparagraph (A) by inserting “Sub-
18 sidies” before “Agreement”; and

19 (ii) in subparagraph (B) by striking “class
20 or kind of merchandise involved” and inserting
21 “subject merchandise”.

22 (B) Section 705(b)(4)(A) (19 U.S.C.
23 1671d(b)(4)) is amended to read as follows:

24 “(A) COMMISSION STANDARD FOR RETRO-
25 ACTIVE APPLICATION.—

1 “(i) IN GENERAL.—If the finding of
2 the administering authority under sub-
3 section (a)(2) is affirmative, then the final
4 determination of the Commission shall in-
5 clude a finding as to whether the imports
6 subject to the affirmative determination
7 under subsection (a)(2) are likely to under-
8 mine seriously the remedial effect of the
9 countervailing duty order to be issued
10 under section 706.

11 “(ii) FACTORS TO CONSIDER.—In
12 making the evaluation under clause (i), the
13 Commission shall consider, among other
14 factors it considers relevant—

15 “(I) the timing and the volume of
16 the imports,

17 “(II) any rapid increase in inven-
18 tories of the imports, and

19 “(III) any other circumstances
20 indicating that the remedial effect of
21 the countervailing duty order will be
22 seriously undermined.”.

23 (b) ANTIDUMPING INVESTIGATIONS.—

24 (1) PRELIMINARY DETERMINATIONS.—Section
25 733(e)(1) (19 U.S.C. 1673b(e)(1)) is amended—

1 (A) in the matter preceding subparagraph
2 (A) by striking “best information” and insert-
3 ing “information”; and

4 (B) by amending subparagraphs (A) and
5 (B) to read as follows:

6 “(A)(i) there is a history of dumping and
7 material injury by reason of dumped imports in
8 the United States or elsewhere of the subject
9 merchandise, or

10 “(ii) the person by whom, or for whose ac-
11 count, the merchandise was imported knew or
12 should have known that the exporter was selling
13 the subject merchandise at less than its fair
14 value and that there was likely to be material
15 injury by reason of such sales, and

16 “(B) there have been massive imports of
17 the subject merchandise over a relatively short
18 period.”.

19 (2) FINAL DETERMINATIONS.—(A) Section
20 735(a)(3) (19 U.S.C. 1673d(a)(3)) is amended—

21 (i) in clause (i) of subparagraph (A)—

22 (I) by inserting “and material injury
23 by reason of dumped imports” after “his-
24 tory of dumping”; and

1 (II) by striking “class or kind of the
2 merchandise which is the subject of the in-
3 vestigation” and inserting “subject mer-
4 chandise”;

5 (ii) in clause (ii) of subparagraph (A) by
6 striking “merchandise which is the subject of
7 the investigation at less than its fair value” and
8 inserting “subject merchandise at less than its
9 fair value and that there would be material in-
10 jury by reason of such sales”; and

11 (iii) in subparagraph (B) by striking “mer-
12 chandise which is the subject of the investiga-
13 tion” and inserting “subject merchandise”.

14 (B) Section 735(b)(4)(A) (19 U.S.C.
15 1673d(b)(4)(A)) is amended to read as follows:

16 “(A) COMMISSION STANDARD FOR RETRO-
17 ACTIVE APPLICATION.—

18 “(i) IN GENERAL.—If the finding of
19 the administering authority under sub-
20 section (a)(3) is affirmative, then the final
21 determination of the Commission shall in-
22 clude a finding as to whether the imports
23 subject to the affirmative determination
24 under subsection (a)(3) are likely to under-
25 mine seriously the remedial effect of the

1 antidumping duty order to be issued under
2 section 736.

3 “(ii) FACTORS TO CONSIDER.—In
4 making the evaluation under clause (i), the
5 Commission shall consider, among other
6 factors it considers relevant—

7 “(I) the timing and the volume of
8 the imports,

9 “(II) a rapid increase in inven-
10 tories of the imports, and

11 “(III) any other circumstances
12 indicating that the remedial effect of
13 the antidumping order will be seri-
14 ously undermined.”.

15 **SEC. 215. PROVISIONAL MEASURES.**

16 (a) COUNTERVAILING DUTIES.—

17 (1) SUSPENSION OF LIQUIDATION.—Section
18 703(d) (19 U.S.C. 1671b(d)) is amended—

19 (A) in paragraph (1), by striking “ware-
20 house” and all that follows through “Register,”
21 and inserting “warehouse, for consumption on
22 or after the later of—

23 “(A) the date on which notice of the deter-
24 mination is published in the Federal Register,
25 or

1 “(B) the date that is 60 days after the
2 date on which notice of the determination to
3 initiate the investigation is published in the
4 Federal Register,”; and

5 (B) by adding at the end the following:

6 “The instructions of the administering authority under
7 paragraphs (1) and (2) may not remain in effect for more
8 than 4 months.”.

9 (2) CRITICAL CIRCUMSTANCES CASES.—Section
10 703(e)(2) (19 U.S.C. 1671b(e)(2)) is amended by
11 striking “warehouse, for consumption on or after the
12 date which is 90 days before the date on which sus-
13 pension of liquidation was first ordered.” and insert-
14 ing “warehouse, for consumption on or after the
15 later of—

16 “(A) the date which is 90 days before the
17 date on which the suspension of liquidation was
18 first ordered, or

19 “(B) the date on which notice of the deter-
20 mination to initiate the investigation is pub-
21 lished in the Federal Register.”.

22 (b) ANTIDUMPING DUTIES.—

23 (1) SUSPENSION OF LIQUIDATION.—Section
24 733(d) (19 U.S.C. 1673b(d)) is amended—

1 (A) in paragraph (1), by striking “ware-
2 house” and all that follows through “Register,”
3 and inserting “warehouse, for consumption on
4 or after the later of—

5 “(A) the date on which notice of the deter-
6 mination is published in the Federal Register,
7 or

8 “(B) the date that is 60 days after the
9 date on which notice of the determination to
10 initiate the investigation is published in the
11 Federal Register,”; and

12 (B) by adding at the end the following:
13 “The instructions of the administering authority under
14 paragraphs (1) and (2) may not remain in effect for more
15 than 4 months, except that the administering authority
16 may, at the request of exporters representing a significant
17 proportion of exports of the subject merchandise, extend
18 that 4-month period to not more than 6 months.”.

19 (2) CRITICAL CIRCUMSTANCES CASES.—Section
20 733(e)(2) (19 U.S.C. 1673b(e)(2)) is amended by
21 striking “warehouse, for consumption on or after the
22 date which is 90 days before the date on which sus-
23 pension of liquidation was first ordered.” and insert-
24 ing “warehouse, for consumption on or after the
25 later of—

1 “(A) the date which is 90 days before the
2 date on which the suspension of liquidation was
3 first ordered, or

4 “(B) the date on which notice of the deter-
5 mination to initiate the investigation is pub-
6 lished in the Federal Register.”.

7 **SEC. 216. CONDITIONS ON ACCEPTANCE OF SUSPENSION**
8 **AGREEMENTS.**

9 (a) COUNTERVAILING DUTIES.—Section 704(d)(1)
10 (19 U.S.C. 1671c(d)(1)) is amended by striking “In apply-
11 ing” and inserting the following:

12 “Where practicable, the administering authority
13 shall provide to the exporters who would have been
14 subject to the agreement the reasons for not accept-
15 ing the agreement and, to the extent possible, an op-
16 portunity to submit comments thereon. In applying”.

17 (b) ANTIDUMPING DUTIES.—Section 734(d) (19
18 U.S.C. 1673c(d)) is amended by adding at the end the
19 following flush sentence:

20 “Where practicable, the administering authority shall pro-
21 vide to the exporters who would have been subject to the
22 agreement the reasons for not accepting the agreement
23 and, to the extent possible, an opportunity to submit com-
24 ments thereon.”.

1 **SEC. 217. TERMINATION OF INVESTIGATION.**

2 (a) COUNTERVAILING DUTY INVESTIGATIONS.—Sec-
3 tion 704(a)(1) (19 U.S.C. 1671c(a)(1)) is amended—

4 (1) by striking “Except” and inserting “(A)
5 WITHDRAWAL OF PETITION.—Except”;

6 (2) by indenting the text so as to align it with
7 subparagraph (B) (as added by paragraph (3) of
8 this subsection); and

9 (3) by adding at the end the following:

10 “(B) REFILEING OF PETITION.—If, within 3
11 months after the withdrawal of a petition under
12 subparagraph (A), a new petition is filed seek-
13 ing the imposition of duties on both the subject
14 merchandise of the withdrawn petition and the
15 subject merchandise from another country, the
16 administering authority and the Commission
17 may use in the investigation initiated pursuant
18 to the new petition any records compiled in an
19 investigation conducted pursuant to the with-
20 drawn petition. This subparagraph applies only
21 with respect to the first withdrawal of a peti-
22 tion.”.

23 (b) ANTIDUMPING DUTY INVESTIGATIONS.—Section
24 734(a)(1) (19 U.S.C. 1673c(a)(1)) is amended—

25 (1) by striking “Except” and inserting “(A)
26 WITHDRAWAL OF PETITION.—Except”;

1 (2) by indenting the text so as to align it with
2 subparagraph (B) (as added by paragraph (3) of
3 this subsection); and

4 (3) by adding at the end the following:

5 “(B) REFILING OF PETITION.—If, within 3
6 months after the withdrawal of a petition under
7 subparagraph (A), a new petition is filed seek-
8 ing the imposition of duties on both the subject
9 merchandise of the withdrawn petition and the
10 subject merchandise from another country, the
11 administering authority and the Commission
12 may use in the investigation initiated pursuant
13 to the new petition any records compiled in an
14 investigation conducted pursuant to the with-
15 drawn petition. This subparagraph applies only
16 with respect to the first withdrawal of a peti-
17 tion.”.

18 **SEC. 218. SPECIAL RULES FOR REGIONAL INDUSTRIES.**

19 (a) **SUSPENSION AGREEMENTS.—**

20 (1) **COUNTERVAILING DUTY INVESTIGATIONS.—**

21 Section 704 (19 U.S.C. 1671c) is amended by add-
22 ing at the end the following new subsection:

23 “(l) **SPECIAL RULE FOR REGIONAL INDUSTRY IN-**
24 **VESTIGATIONS.—**

1 “(1) SUSPENSION AGREEMENTS.—If the Com-
2 mission makes a regional industry determination
3 under section 771(4)(C), the administering authority
4 shall offer exporters of the subject merchandise who
5 account for substantially all exports of that mer-
6 chandise for sale in the region concerned the oppor-
7 tunity to enter into an agreement described in sub-
8 section (b) or (c).

9 “(2) REQUIREMENTS FOR SUSPENSION AGREE-
10 MENTS.—Any agreement described in paragraph (1)
11 shall be subject to all the requirements imposed
12 under this section for other agreements under sub-
13 section (b) or (c), except that if the Commission
14 makes a regional industry determination described
15 in paragraph (1) in the final affirmative determina-
16 tion under section 705(b) but not in the preliminary
17 affirmative determination under section 703(a), any
18 agreement described in paragraph (1) may be ac-
19 cepted within 60 days after the countervailing duty
20 order is published under section 706.

21 “(3) EFFECT OF SUSPENSION AGREEMENT ON
22 COUNTERVAILING DUTY ORDER.—If an agreement
23 described in paragraph (1) is accepted after the
24 countervailing duty order is published, the admin-
25 istering authority shall rescind the order, refund any

1 cash deposit and release any bond or other security
2 deposited under section 703(d)(1)(B), and instruct
3 the Customs Service that entries of the subject mer-
4 chandise that were made during the period that the
5 order was in effect shall be liquidated without regard
6 to countervailing duties.”.

7 (2) ANTIDUMPING INVESTIGATIONS.—Section
8 734 (19 U.S.C. 1673c) is amended by adding at the
9 end the following new subsection:

10 “(m) SPECIAL RULE FOR REGIONAL INDUSTRY IN-
11 VESTIGATIONS.—

12 “(1) SUSPENSION AGREEMENTS.—If the Com-
13 mission makes a regional industry determination
14 under section 771(4)(C), the administering authority
15 shall offer exporters of the subject merchandise who
16 account for substantially all exports of that mer-
17 chandise for sale in the region concerned the oppor-
18 tunity to enter into an agreement described in sub-
19 section (b), (c), or (l).

20 “(2) REQUIREMENTS FOR SUSPENSION AGREE-
21 MENTS.—Any agreement described in paragraph (1)
22 shall be subject to all the requirements imposed
23 under this section for other agreements under sub-
24 section (b), (c), or (l), except that if the Commission
25 makes a regional industry determination described

1 in paragraph (1) in the final affirmative determina-
2 tion under section 735(b) but not in the preliminary
3 affirmative determination under section 733(a), any
4 agreement described in paragraph (1) may be ac-
5 cepted within 60 days after the antidumping order
6 is published under section 736.

7 “(3) EFFECT OF SUSPENSION AGREEMENT ON
8 ANTIDUMPING DUTY ORDER.—If an agreement de-
9 scribed in paragraph (1) is accepted after the anti-
10 dumping duty order is published, the administering
11 authority shall rescind the order, refund any cash
12 deposit and release any bond or other security de-
13 posited under section 733(d)(1)(B), and instruct the
14 Customs Service that entries of the subject merchan-
15 dise that were made during the period that the order
16 was in effect shall be liquidated without regard to
17 antidumping duties.”.

18 (b) APPLICABILITY OF ORDERS TO NEW SHIP-
19 PERS.—

20 (1) COUNTERVAILING DUTY CASES.—Section
21 706 (19 U.S.C. 1671e) is amended by adding at the
22 end the following new subsection:

23 “(c) SPECIAL RULE FOR REGIONAL INDUSTRIES.—

24 “(1) IN GENERAL.—In an investigation under
25 this subtitle in which the Commission makes a re-

1 regional industry determination under section
2 771(4)(C), the administering authority shall, to the
3 maximum extent possible, direct that duties be as-
4 sessed only on the subject merchandise of the spe-
5 cific exporters or producers that exported the subject
6 merchandise for sale in the region concerned during
7 the period of investigation.

8 “(2) EXCEPTION FOR NEW EXPORTERS AND
9 PRODUCERS.—After publication of the countervailing
10 duty order, if the administering authority finds that
11 a new exporter or producer is exporting the subject
12 merchandise for sale in the region concerned, the ad-
13 ministering authority shall direct that duties be as-
14 sessed on the subject merchandise of the new ex-
15 porter or producer consistent with the provisions of
16 section 751(a)(2)(B).”.

17 (2) ANTIDUMPING DUTY CASES.—Section 736
18 (19 U.S.C. 1673e) is amended by adding at the end
19 the following new subsection:

20 “(d) SPECIAL RULE FOR REGIONAL INDUSTRIES.—

21 “(1) IN GENERAL.—In an investigation in
22 which the Commission makes a regional industry de-
23 termination under section 771(4)(C), the administer-
24 ing authority shall, to the maximum extent possible,
25 direct that duties be assessed only on the subject

1 merchandise of the specific exporters or producers
2 that exported the subject merchandise for sale in the
3 region concerned during the period of investigation.

4 “(2) EXCEPTION FOR NEW EXPORTERS AND
5 PRODUCERS.—After publication of the antidumping
6 duty order, if the administering authority finds that
7 a new exporter or producer is exporting the subject
8 merchandise for sale in the region concerned, the ad-
9 ministering authority shall direct that duties be as-
10 sessed on the subject merchandise of the new ex-
11 porter or producer consistent with the provisions of
12 section 751(a)(2)(B).”.

13 **SEC. 219. DETERMINATION OF WEIGHTED AVERAGE DUMP-**
14 **ING MARGIN.**

15 (a) PRELIMINARY DETERMINATION.—

16 (1) IN GENERAL.—Section 733(d) (19 U.S.C.
17 1673b(d)) is amended—

18 (A) by striking paragraph (2);

19 (B) by redesignating paragraph (1), as
20 amended by section 215(b)(1)(A), as paragraph
21 (2);

22 (C) by inserting “and” at the end of para-
23 graph (2), as so redesignated; and

24 (D) by inserting before such paragraph (2)
25 the following new paragraph:

1 “(1)(A) shall—

2 “(i) determine an estimated weighted aver-
3 age dumping margin for each exporter and pro-
4 ducer individually investigated, and

5 “(ii) determine, in accordance with section
6 735(c)(5), an estimated all-others rate for all
7 exporters and producers not individually inves-
8 tigated, and

9 “(B) shall order the posting of a cash deposit,
10 bond, or other security, as the administering author-
11 ity deems appropriate, for each entry of the subject
12 merchandise in an amount based on the estimated
13 weighted average dumping margin or the estimated
14 all-others rate, whichever is applicable.”.

15 (2) CONFORMING AMENDMENTS.—Section
16 733(b)(1)(A) (19 U.S.C. 1673b(b)(1)(A)) is amend-
17 ed by striking the last sentence.

18 (b) FINAL DETERMINATION.—

19 (1) IN GENERAL.—Section 735(c)(1) (19
20 U.S.C. 1673d(c)(1)) is amended—

21 (A) in subparagraph (B)—

22 (i) by redesignating such subpara-
23 graph as subparagraph (C); and

24 (ii) by striking “under paragraphs (1)
25 and (2)” and all that follows through “se-

1 curity” and inserting “the suspension of
2 liquidation under section 733(d)(2)”;

3 (B) by striking “and” at the end of sub-
4 paragraph (A); and

5 (C) by inserting after subparagraph (A)
6 the following new subparagraph:

7 “(B)(i) the administering authority shall—

8 “(I) determine the estimated weighted
9 average dumping margin for each exporter
10 and producer individually investigated, and

11 “(II) determine, in accordance with
12 paragraph (5), the estimated all-others
13 rate for all exporters and producers not in-
14 dividually investigated, and

15 “(ii) the administering authority shall
16 order the posting of a cash deposit, bond, or
17 other security, as the administering authority
18 deems appropriate, for each entry of the subject
19 merchandise in an amount based on the esti-
20 mated weighted average dumping margin or the
21 estimated all-others rate, whichever is applica-
22 ble, and”.

23 (2) METHOD FOR DETERMINING WEIGHTED AV-
24 ERAGE DUMPING MARGIN.—Section 735(c) (19

1 U.S.C. 1673d(c)) is amended by adding at the end
2 the following new paragraph:

3 “(5) METHOD FOR DETERMINING ESTIMATED
4 ALL-OTHERS RATE.—

5 “(A) GENERAL RULE.—For purposes of
6 this subsection and section 733(d), the esti-
7 mated all-others rate shall be an amount equal
8 to the weighted average of the estimated
9 weighted average dumping margins established
10 for exporters and producers individually inves-
11 tigated, excluding any zero and de minimis
12 margins, and any margins determined entirely
13 under section 776.

14 “(B) EXCEPTION.—If the estimated
15 weighted average dumping margins established
16 for all exporters and producers individually in-
17 vestigated are zero or de minimis margins, or
18 are determined entirely under section 776, the
19 administering authority may use any reasonable
20 method to establish the estimated all-others
21 rate for exporters and producers not individ-
22 ually investigated, including averaging the esti-
23 mated weighted average dumping margins de-
24 termined for the exporters and producers indi-
25 vidually investigated.”.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) Section 733(e)(2) is amended by striking
3 “subsection (d)(1)” and inserting “subsection
4 (d)(2)”.

5 (2) Section 734(f)(2)(A) is amended—

6 (A) in clause (i), by striking “section
7 733(d)(1)” and inserting “section 733(d)(2)”;
8 and

9 (B) in clause (iii), by striking “section
10 733(d)(2)” and inserting “section
11 733(d)(1)(B)”.

12 (3) Section 734(f)(2)(B) is amended—

13 (A) by striking “section 733(d)(1)” and in-
14 serting “section 733(d)(2)”; and

15 (B) by striking “section 733(d)(2)” and
16 inserting “section 733(d)(1)(B)”.

17 (4) Section 734(h)(3) is amended—

18 (A) in subparagraph (A), by striking “sec-
19 tion 733(d)(1)” and inserting “section
20 733(d)(2)”; and

21 (B) in subparagraph (B), by striking “sec-
22 tion 733(d)(2)” and inserting “section
23 733(d)(1)(B)”.

1 (5) Section 734(i)(1)(A) is amended by striking
2 “section 733(d)(1)” and inserting “section
3 733(d)(2)”.

4 (6) Section 735(c)(2)(A) is amended by striking
5 “section 703(d)(1)” and inserting “section
6 733(d)(2)”.

7 (7) Section 735(c)(2)(B) is amended by striking
8 “section 733(d)(2)” and inserting “section
9 733(d)(1)(B)”.

10 (8) Section 735(c)(3)(B) is amended by striking
11 “section 733(d)(2)” and inserting “section
12 733(d)(1)(B)”.

13 (9) Section 736(b)(1) is amended by striking
14 “section 733(d)(1)” each place it appears and in-
15 serting “section 733(d)(2)”.

16 (10) Section 737(a) is amended by striking
17 “section 733(d)(2)” each place it appears in the
18 heading and in the text and inserting “section
19 733(d)(1)(B)”.

20 **SEC. 220. REVIEW OF DETERMINATIONS.**

21 (a) IN GENERAL.—Section 751 (19 U.S.C. 1675) is
22 amended to read as follows:

23 **“SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.**

24 “(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

1 “(1) IN GENERAL.—At least once during each
2 12-month period beginning on the anniversary of the
3 date of publication of a countervailing duty order
4 under this title or under section 303 of this Act, an
5 antidumping duty order under this title or a finding
6 under the Antidumping Act, 1921, or a notice of the
7 suspension of an investigation, the administering au-
8 thority, if a request for such a review has been re-
9 ceived and after publication of notice of such review
10 in the Federal Register, shall—

11 “(A) review and determine the amount of
12 any net countervailable subsidy,

13 “(B) review, and determine (in accordance
14 with paragraph (2)), the amount of any anti-
15 dumping duty, and

16 “(C) review the current status of, and
17 compliance with, any agreement by reason of
18 which an investigation was suspended, and re-
19 view the amount of any net countervailable sub-
20 sidy or dumping margin involved in the agree-
21 ment,

22 and shall publish in the Federal Register the results
23 of such review, together with notice of any duty to
24 be assessed, estimated duty to be deposited, or inves-
25 tigation to be resumed.

1 “(2) DETERMINATION OF ANTIDUMPING DU-
2 TIES.—

3 “(A) IN GENERAL.—For the purpose of
4 paragraph (1)(B), the administering authority
5 shall determine—

6 “(i) the normal value and export price
7 (or constructed export price) of each entry
8 of the subject merchandise, and

9 “(ii) the dumping margin for each
10 such entry.

11 “(B) DETERMINATION OF ANTIDUMPING
12 OR COUNTERVAILING DUTIES FOR NEW EX-
13 PORTERS AND PRODUCERS.—

14 “(i) IN GENERAL.—If the administer-
15 ing authority receives a request from an
16 exporter or producer of the subject mer-
17 chandise establishing that—

18 “(I) such exporter or producer
19 did not export the merchandise that
20 was the subject of an antidumping
21 duty or countervailing duty order to
22 the United States (or, in the case of
23 a regional industry, did not export the
24 subject merchandise for sale in the re-

1 gion concerned) during the period of
2 investigation, and

3 “(II) such exporter or producer
4 is not affiliated (within the meaning
5 of section 771(33)) with any exporter
6 or producer who exported the subject
7 merchandise to the United States (or
8 in the case of a regional industry, who
9 exported the subject merchandise for
10 sale in the region concerned) during
11 that period,

12 the administering authority shall conduct a
13 review under this subsection to establish
14 an individual weighted average dumping
15 margin or an individual countervailing
16 duty rate (as the case may be) for such ex-
17 porter or producer.

18 “(ii) TIME FOR REVIEW UNDER
19 CLAUSE (i).—The administering authority
20 shall commence a review under clause (i)
21 in the calendar month beginning after—

22 “(I) the end of the 6-month pe-
23 riod beginning on the date of the
24 countervailing duty or antidumping
25 duty order under review, or

1 “(II) the end of any 6-month pe-
2 riod occurring thereafter,
3 if the request for the review is made dur-
4 ing that 6-month period.

5 “(iii) POSTING BOND OR SECURITY.—
6 The administering authority shall, at the
7 time a review under this subparagraph is
8 initiated, direct the Customs Service to
9 allow, at the option of the importer, the
10 posting, until the completion of the review,
11 of a bond or security in lieu of a cash de-
12 posit for each entry of the subject mer-
13 chandise.

14 “(iv) TIME LIMITS.—The administer-
15 ing authority shall make a preliminary de-
16 termination in a review conducted under
17 this subparagraph within 180 days after
18 the date on which the review is initiated,
19 and a final determination within 90 days
20 after the date the preliminary determina-
21 tion is issued, except that if the admin-
22 istering authority concludes that the case
23 is extraordinarily complicated, it may ex-
24 tend the 180-day period to 300 days and
25 may extend the 90-day period to 150 days.

1 “(C) RESULTS OF DETERMINATIONS.—The
2 determination under this paragraph shall be the
3 basis for the assessment of countervailing or
4 antidumping duties on entries of merchandise
5 covered by the determination and for deposits
6 of estimated duties.

7 “(3) TIME LIMITS.—

8 “(A) PRELIMINARY AND FINAL DETER-
9 MINATIONS.—The administering authority shall
10 make a preliminary determination under sub-
11 paragraph (A), (B), or (C) of paragraph (1)
12 within 245 days after the last day of the month
13 in which occurs the anniversary of the date of
14 publication of the order, finding, or suspension
15 agreement for which the review under para-
16 graph (1) is requested, and a final determina-
17 tion under paragraph (1) within 120 days after
18 the date on which the preliminary determina-
19 tion is published. If it is not practicable to com-
20 plete the review within the foregoing time, the
21 administering authority may extend that 245-
22 day period to 365 days and may extend that
23 120-day period to 180 days. The administering
24 authority may extend the time for making a
25 final determination without extending the time

1 for making a preliminary determination, if such
2 final determination is made not later than 300
3 days after the date on which the preliminary
4 determination is published.

5 “(B) LIQUIDATION OF ENTRIES.—If the
6 administering authority orders any liquidation
7 of entries pursuant to a review under paragraph
8 (1), such liquidation shall be made promptly
9 and, to the greatest extent practicable, within
10 90 days after the instructions to Customs are
11 issued. In any case in which liquidation has not
12 occurred within that 90-day period, the Sec-
13 retary of the Treasury shall, upon the request
14 of the affected party, provide an explanation
15 thereof.

16 “(C) EFFECT OF PENDING REVIEW UNDER
17 SECTION 516A.—In a case in which a final de-
18 termination under paragraph (1) is under re-
19 view under section 516A and a liquidation of
20 entries covered by the determination is enjoined
21 under section 516A(c)(2) or suspended under
22 section 516A(g)(5)(C), the administering au-
23 thority shall, within 10 days after the final dis-
24 position of the review under section 516A,
25 transmit to the Federal Register for publication

1 the final disposition and issue instructions to
2 the Customs Service with respect to the liquida-
3 tion of entries pursuant to the review. In such
4 a case, the 90-day period referred to in sub-
5 paragraph (B) shall begin on the day on which
6 the administering authority issues such instruc-
7 tions.

8 “(4) ABSORPTION OF ANTIDUMPING DUTIES.—
9 During any review under this subsection initiated 2
10 years or 4 years after the publication of an anti-
11 dumping duty order under section 736(a), the ad-
12 ministering authority, if requested, shall determine
13 whether antidumping duties have been absorbed by
14 a foreign producer or exporter subject to the order
15 if the subject merchandise is sold in the United
16 States through an importer who is affiliated with
17 such foreign producer or exporter. The administer-
18 ing authority shall notify the Commission of its find-
19 ings regarding such duty absorption for the Commis-
20 sion to consider in conducting a review under sub-
21 section (c).

22 “(b) REVIEWS BASED ON CHANGED CIR-
23 CUMSTANCES.—

24 “(1) IN GENERAL.—Whenever the administer-
25 ing authority or the Commission receives informa-

1 tion concerning, or a request from an interested
2 party for a review of—

3 “(A) a final affirmative determination that
4 resulted in an antidumping duty order under
5 this title or a finding under the Antidumping
6 Act, 1921, or in a countervailing duty order
7 under this title or section 303,

8 “(B) a suspension agreement accepted
9 under section 704 or 734, or

10 “(C) a final affirmative determination re-
11 sulting from an investigation continued pursu-
12 ant to section 704(g) or 734(g),

13 which shows changed circumstances sufficient to
14 warrant a review of such determination or agree-
15 ment, the administering authority or the Commis-
16 sion (as the case may be) shall conduct a review of
17 the determination or agreement after publishing no-
18 tice of the review in the Federal Register.

19 “(2) COMMISSION REVIEW.—In conducting a
20 review under this subsection, the Commission
21 shall—

22 “(A) in the case of a countervailing duty
23 order or antidumping duty order or finding, de-
24 termine whether revocation of the order or find-

1 ing is likely to lead to continuation or recur-
2 rence of material injury,

3 “(B) in the case of a determination made
4 pursuant to section 704(h)(2) or 734(h)(2), de-
5 termine whether the suspension agreement con-
6 tinues to eliminate completely the injurious ef-
7 fects of imports of the subject merchandise, and

8 “(C) in the case of an affirmative deter-
9 mination resulting from an investigation contin-
10 ued under section 704(g) or 734(g), determine
11 whether termination of the suspended investiga-
12 tion is likely to lead to continuation or recur-
13 rence of material injury.

14 “(3) BURDEN OF PERSUASION.—During a re-
15 view conducted by the Commission under this sub-
16 section—

17 “(A) the party seeking revocation of an
18 order or finding described in paragraph (1)(A)
19 shall have the burden of persuasion with respect
20 to whether there are changed circumstances
21 sufficient to warrant such revocation, and

22 “(B) the party seeking termination of a
23 suspended investigation or a suspension agree-
24 ment shall have the burden of persuasion with
25 respect to whether there are changed cir-

1 cumstances sufficient to warrant such termi-
2 nation.

3 “(4) LIMITATION ON PERIOD FOR REVIEW.—In
4 the absence of good cause shown—

5 “(A) the Commission may not review a de-
6 termination made under section 705(b) or
7 735(b), or an investigation suspended under
8 section 704 or 734, and

9 “(B) the administering authority may not
10 review a determination made under section
11 705(a) or 735(a), or an investigation suspended
12 under section 704 or 734,

13 less than 24 months after the date of publication of
14 notice of that determination or suspension.

15 “(c) FIVE-YEAR REVIEW.—

16 “(1) IN GENERAL.—Notwithstanding subsection
17 (b) and except in the case of a transition order de-
18 fined in paragraph (6), 5 years after the date of
19 publication of—

20 “(A) a countervailing duty order (other
21 than a countervailing duty order to which sub-
22 paragraph (B) applies or which was issued
23 without an affirmative determination of injury
24 by the Commission under section 303), an anti-
25 dumping duty order, or a notice of suspension

1 of an investigation, described in subsection
2 (a)(1),

3 “(B) a notice of injury determination
4 under section 753 with respect to a countervail-
5 ing duty order, or

6 “(C) a determination under this section to
7 continue an order or suspension agreement,
8 the administering authority and the Commission
9 shall conduct a review to determine, in accordance
10 with section 752, whether revocation of the counter-
11 vailing or antidumping duty order or termination of
12 the investigation suspended under section 704 or
13 734 would be likely to lead to continuation or recur-
14 rence of dumping or a countervailable subsidy (as
15 the case may be) and of material injury.

16 “(2) NOTICE OF INITIATION OF REVIEW.—Not
17 later than 30 days before the fifth anniversary of the
18 date described in paragraph (1), the administering
19 authority shall publish in the Federal Register a no-
20 tice of initiation of a review under this subsection
21 and request that interested parties submit—

22 “(A) a statement expressing their willing-
23 ness to participate in the review by providing
24 information requested by the administering au-
25 thority and the Commission,

1 “(B) a statement regarding the likely ef-
2 fects of revocation of the order or termination
3 of the suspended investigation, and

4 “(C) such other information or industry
5 data as the administering authority or the Com-
6 mission may specify.

7 “(3) RESPONSES TO NOTICE OF INITIATION.—

8 “(A) NO RESPONSE.—If no interested
9 party responds to the notice of initiation under
10 this subsection, the administering authority
11 shall issue a final determination, within 90 days
12 after the initiation of a review, revoking the
13 order or terminating the suspended investiga-
14 tion to which such notice relates. For purposes
15 of this paragraph, an interested party means a
16 party described in section 771(9) (C), (D), (E),
17 (F), or (G).

18 “(B) INADEQUATE RESPONSE.—If inter-
19 ested parties provide inadequate responses to a
20 notice of initiation, the administering authority,
21 within 120 days after the initiation of the re-
22 view, or the Commission, within 150 days after
23 such initiation, may issue, without further in-
24 vestigation, a final determination based on the
25 facts available, in accordance with section 776.

1 “(4) WAIVER OF PARTICIPATION BY CERTAIN
2 INTERESTED PARTIES.—

3 “(A) IN GENERAL.—An interested party
4 described in section 771(9) (A) or (B) may
5 elect not to participate in a review conducted by
6 the administering authority under this sub-
7 section and to participate only in the review
8 conducted by the Commission under this sub-
9 section.

10 “(B) EFFECT OF WAIVER.—In a review in
11 which an interested party waives its participa-
12 tion pursuant to this paragraph, the admin-
13 istering authority shall conclude that revocation
14 of the order or termination of the investigation
15 would be likely to lead to continuation or recur-
16 rence of dumping or a countervailable subsidy
17 (as the case may be) with respect to that inter-
18 ested party.

19 “(5) CONDUCT OF REVIEW.—

20 “(A) TIME LIMITS FOR COMPLETION OF
21 REVIEW.—Unless the review has been com-
22 pleted pursuant to paragraph (3) or paragraph
23 (4) applies, the administering authority shall
24 make its final determination pursuant to sec-
25 tion 752 (b) or (c) within 240 days after the

1 date on which a review is initiated under this
2 subsection. If the administering authority
3 makes a final affirmative determination, the
4 Commission shall make its final determination
5 pursuant to section 752(a) within 360 days
6 after the date on which a review is initiated
7 under this subsection.

8 “(B) EXTENSION OF TIME LIMIT.—The
9 administering authority or the Commission (as
10 the case may be) may extend the period of time
11 for making their respective determinations
12 under this subsection by not more than 90
13 days, if the administering authority or the Com-
14 mission (as the case may be) determines that
15 the review is extraordinarily complicated. In a
16 review in which the administering authority ex-
17 tends the time for making a final determina-
18 tion, but the Commission does not extend the
19 time for making a determination, the Commis-
20 sion’s determination shall be made not later
21 than 120 days after the date on which the final
22 determination of the administering authority is
23 published.

24 “(C) EXTRAORDINARILY COMPLICATED.—
25 For purposes of this subsection, the administer-

1 ing authority or the Commission (as the case
2 may be) may treat a review as extraordinarily
3 complicated if—

4 “(i) there is a large number of issues,

5 “(ii) the issues to be considered are
6 complex,

7 “(iii) there is a large number of firms
8 involved,

9 “(iv) the orders or suspended inves-
10 tigations have been grouped as described
11 in subparagraph (D), or

12 “(v) it is a review of a transition
13 order.

14 “(D) GROUPED REVIEWS.—The Commis-
15 sion, in consultation with the administering au-
16 thority, may group orders or suspended inves-
17 tigations for review if it considers that such
18 grouping is appropriate and will promote ad-
19 ministrative efficiency. Where orders or sus-
20 pended investigations have been grouped, the
21 Commission shall, subject to subparagraph (B),
22 make its final determination under this sub-
23 section not later than 120 days after the date
24 that the administering authority publishes no-

1 tice of its final determination with respect to
2 the last order or agreement in the group.

3 “(6) SPECIAL TRANSITION RULES.—

4 “(A) SCHEDULE FOR REVIEWS OF TRANSI-
5 TION ORDERS.—

6 “(i) INITIATION.—The administering
7 authority shall begin its review of transi-
8 tion orders in the 42d calendar month
9 after the date such orders are issued. A re-
10 view of all transition orders shall be initi-
11 ated not later than the 5th anniversary
12 after the date such orders are issued.

13 “(ii) COMPLETION.—A review of a
14 transition order shall be completed not
15 later than 18 months after the date such
16 review is initiated. Reviews of all transition
17 orders shall be completed not later than 18
18 months after the 5th anniversary of the
19 date such orders are issued.

20 “(iii) SUBSEQUENT REVIEWS.—The
21 time limits set forth in clauses (i) and (ii)
22 shall be applied to all subsequent 5-year
23 reviews of transition orders by substituting
24 ‘date of the determination to continue such
25 orders’ for ‘date such orders are issued’.

1 “(iv) REVOCATION AND TERMI-
2 NATION.—No transition order may be re-
3 voked under this subsection before the date
4 that is 5 years after the date the WTO
5 Agreement enters into force with respect to
6 the United States.

7 “(B) SEQUENCE OF TRANSITION RE-
8 VIEWS.—The administering authority, in con-
9 sultation with the Commission, shall determine
10 such sequence of review of transition orders as
11 it deems appropriate to promote administrative
12 efficiency. To the extent practicable, older or-
13 ders shall be reviewed first.

14 “(C) DEFINITION OF TRANSITION
15 ORDER.—For purposes of this section, the term
16 ‘transition order’ means—

17 “(i) a countervailing duty order under
18 this title or under section 303,

19 “(ii) an antidumping duty order under
20 this title or a finding under the Antidump-
21 ing Act, 1921, or

22 “(iii) a suspension of an investigation
23 under section 704 or 734,

1 which is in effect on the date the WTO Agree-
2 ment enters into force with respect to the Unit-
3 ed States.

4 “(D) ISSUE DATE FOR TRANSITION OR-
5 DERS.—For purposes of this subsection, a tran-
6 sition order shall be treated as issued on the
7 date the WTO Agreement enters into force with
8 respect to the United States, if such order is
9 based on an investigation conducted by both the
10 administering authority and the Commission.

11 “(d) REVOCATION OF ORDER OR FINDING; TERMI-
12 NATION OF SUSPENDED INVESTIGATION.—

13 “(1) IN GENERAL.—The administering author-
14 ity may revoke, in whole or in part, a countervailing
15 duty order or an antidumping duty order or finding,
16 or terminate a suspended investigation, after review
17 under subsection (a) or (b). The administering au-
18 thority shall not revoke, in whole or in part, a coun-
19 tervailing duty order or terminate a suspended in-
20 vestigation on the basis of any export taxes, duties,
21 or other charges levied on the export of the subject
22 merchandise to the United States which are specifi-
23 cally intended to offset the countervailable subsidy
24 received.

1 “(2) FIVE-YEAR REVIEWS.—In the case of a re-
2 view conducted under subsection (c), the administer-
3 ing authority shall revoke a countervailing duty
4 order or an antidumping duty order or finding, or
5 terminate a suspended investigation, unless—

6 “(A) the administering authority makes a
7 determination that dumping or a
8 countervailable subsidy, as the case may be,
9 would be likely to continue or recur, and

10 “(B) the Commission makes a determina-
11 tion that material injury would be likely to con-
12 tinue or recur as described in section 752(a).

13 “(3) APPLICATION OF REVOCATION OR TERMI-
14 NATION.—A determination under this section to re-
15 voke an order or finding or terminate a suspended
16 investigation shall apply with respect to unliquidated
17 entries of the subject merchandise which are en-
18 tered, or withdrawn from warehouse, for consump-
19 tion on or after the date determined by the admin-
20 istering authority.

21 “(e) HEARINGS.—Whenever the administering au-
22 thority or the Commission conducts a review under this
23 section, it shall, upon the request of an interested party,
24 hold a hearing in accordance with section 774(b) in con-
25 nection with that review.

1 “(f) DETERMINATION THAT BASIS FOR SUSPENSION
2 NO LONGER EXISTS.—If the determination of the Com-
3 mission under subsection (b)(2)(B) is negative, the sus-
4 pension agreement shall be treated as not accepted, begin-
5 ning on the date of publication of the Commission’s deter-
6 mination, and the administering authority and the Com-
7 mission shall proceed, under section 704(i) or 734(i), as
8 if the suspension agreement had been violated on that
9 date, except that no duty under any order subsequently
10 issued shall be assessed on merchandise entered, or with-
11 drawn from warehouse, for consumption before that date.

12 “(g) CORRECTION OF MINISTERIAL ERRORS.—The
13 administering authority shall establish procedures for the
14 correction of ministerial errors in final determinations
15 within a reasonable time after the determinations are is-
16 sued under this section. Such procedures shall ensure op-
17 portunity for interested parties to present their views re-
18 garding any such errors. As used in this subsection, the
19 term ‘ministerial error’ includes errors in addition, sub-
20 traction, or other arithmetic function, clerical errors re-
21 sulting from inaccurate copying, duplication, or the like,
22 and any other type of unintentional error which the ad-
23 ministering authority considers ministerial.”.

24 (b) REVIEW OF DETERMINATIONS.—

1 (1) IN GENERAL.—Section 516A(a)(1) (19
2 U.S.C. 1516A(a)(1)) is amended by striking “or” at
3 the end of subparagraph (B), by inserting “or” at
4 the end of subparagraph (C), and by inserting im-
5 mediately after subparagraph (C) the following new
6 subparagraph:

7 “(D) a final determination by the admin-
8 istering authority or the Commission under sec-
9 tion 751(c)(3),”.

10 (2) TECHNICAL AMENDMENTS.—Section
11 516A(b)(1) (19 U.S.C. 1516a(b)(1)) is amended—

12 (A) in subparagraph (A), by striking
13 “under paragraph (1) of subsection (a)” and in-
14 serting “under subparagraph (A), (B), or (C) of
15 subsection (a)(1)”, and

16 (B) in subparagraph (B)—

17 (i) by striking “(B) in an action” and
18 inserting “(B)(i) in an action”,

19 (ii) by striking the end period and in-
20 serting “, or”, and

21 (iii) by adding at the end the follow-
22 ing:

23 “(ii) in an action brought under para-
24 graph (1)(D) of subsection (a), to be arbi-

1 trary, capricious, an abuse of discretion, or
2 otherwise not in accordance with law.”.

3 (c) CONFORMING AMENDMENT.—Section 504 (19
4 U.S.C. 1504) is amended—

5 (1) in subsection (a), by inserting “except as
6 provided in section 751(a)(3),” before “an entry of
7 merchandise not liquidated”, and

8 (2) in subsection (d), by striking “When a sus-
9 pension” and inserting “Except as provided in sec-
10 tion 751(a)(3), when a suspension”.

11 **SEC. 221. REVIEW DETERMINATIONS.**

12 (a) IN GENERAL.—Chapter 1 of subtitle C of title
13 VII (19 U.S.C. 1675) is amended by adding at the end
14 the following new section:

15 **“SEC. 752. SPECIAL RULES FOR SECTION 751(b) AND 751(c)**
16 **REVIEWS.**

17 “(a) DETERMINATION OF LIKELIHOOD OF CONTINU-
18 ATION OR RECURRENCE OF MATERIAL INJURY.—

19 “(1) IN GENERAL.—In a review conducted
20 under section 751 (b) or (c), the Commission shall
21 determine whether revocation of an order, or termi-
22 nation of a suspended investigation, would be likely
23 to lead to continuation or recurrence of material in-
24 jury within a reasonably foreseeable time. The Com-
25 mission shall consider the likely volume, price effect,

1 and impact of imports of the subject merchandise on
2 the industry if the order is revoked or the suspended
3 investigation is terminated. The Commission shall
4 take into account—

5 “(A) its prior injury determinations, in-
6 cluding the volume, price effect, and impact of
7 imports of the subject merchandise on the in-
8 dustry before the order was issued or the sus-
9 pension agreement was accepted,

10 “(B) whether any improvement in the state
11 of the industry is related to the order or the
12 suspension agreement,

13 “(C) whether the industry is vulnerable to
14 material injury if the order is revoked or the
15 suspension agreement is terminated, and

16 “(D) in an antidumping proceeding under
17 section 751(c), the findings of the administer-
18 ing authority regarding duty absorption under
19 section 751(a)(4).

20 “(2) VOLUME.—In evaluating the likely volume
21 of imports of the subject merchandise if the order is
22 revoked or the suspended investigation is termi-
23 nated, the Commission shall consider whether the
24 likely volume of imports of the subject merchandise
25 would be significant if the order is revoked or the

1 suspended investigation is terminated, either in ab-
2 solute terms or relative to production or consump-
3 tion in the United States. In so doing, the Commis-
4 sion shall consider all relevant economic factors, in-
5 cluding—

6 “(A) any likely increase in production ca-
7 pacity or existing unused production capacity in
8 the exporting country,

9 “(B) existing inventories of the subject
10 merchandise, or likely increases in inventories,

11 “(C) the existence of barriers to the impor-
12 tation of such merchandise into countries other
13 than the United States, and

14 “(D) the potential for product-shifting if
15 production facilities in the foreign country,
16 which can be used to produce the subject mer-
17 chandise, are currently being used to produce
18 other products.

19 “(3) PRICE.—In evaluating the likely price ef-
20 fects of imports of the subject merchandise if the
21 order is revoked or the suspended investigation is
22 terminated, the Commission shall consider wheth-
23 er—

1 “(A) there is likely to be significant price
2 underselling by imports of the subject merchan-
3 dise as compared to domestic like products, and

4 “(B) imports of the subject merchandise
5 are likely to enter the United States at prices
6 that otherwise would have a significant depress-
7 ing or suppressing effect on the price of domes-
8 tic like products.

9 “(4) IMPACT ON THE INDUSTRY.—In evaluating
10 the likely impact of imports of the subject merchan-
11 dise on the industry if the order is revoked or the
12 suspended investigation is terminated, the Commis-
13 sion shall consider all relevant economic factors
14 which are likely to have a bearing on the state of the
15 industry in the United States, including, but not
16 limited to—

17 “(A) likely declines in output, sales, mar-
18 ket share, profits, productivity, return on in-
19 vestments, and utilization of capacity,

20 “(B) likely negative effects on cash flow,
21 inventories, employment, wages, growth, ability
22 to raise capital, and investment, and

23 “(C) likely negative effects on the existing
24 development and production efforts of the in-
25 dustry, including efforts to develop a derivative

1 or more advanced version of the domestic like
2 product.

3 The Commission shall evaluate all relevant economic
4 factors described in this paragraph within the con-
5 text of the business cycle and the conditions of com-
6 petition that are distinctive to the affected industry.

7 “(5) BASIS FOR DETERMINATION.—The pres-
8 ence or absence of any factor which the Commission
9 is required to consider under this subsection shall
10 not necessarily give decisive guidance with respect to
11 the Commission’s determination of whether material
12 injury is likely to continue or recur within a reason-
13 ably foreseeable time if the order is revoked or the
14 suspended investigation is terminated. In making
15 that determination, the Commission shall consider
16 that the effects of revocation or termination may not
17 be imminent, but may manifest themselves only over
18 a longer period of time.

19 “(6) MAGNITUDE OF MARGIN OF DUMPING AND
20 NET COUNTERAVAILABLE SUBSIDY; NATURE OF
21 COUNTERAVAILABLE SUBSIDY.—In making a deter-
22 mination under section 751 (b) or (c), the Commis-
23 sion may consider the magnitude of the margin of
24 dumping or the magnitude of the net countervailable
25 subsidy. If a countervailable subsidy is involved the

1 Commission shall consider information regarding the
2 nature of the countervailable subsidy and whether
3 the subsidy is a subsidy described in Article 3 or 6.1
4 of the Subsidies Agreement.

5 “(7) CUMULATION.—For purposes of this sub-
6 section, the Commission may cumulatively assess the
7 volume and effect of imports of the subject merchan-
8 dise from all countries with respect to which reviews
9 under section 751 (b) or (c) were initiated on the
10 same day, if such imports would be likely to compete
11 with each other and with domestic like products in
12 the United States market. The Commission shall not
13 cumulatively assess the volume and effects of im-
14 ports of the subject merchandise in a case in which
15 it determines that such imports are likely to have no
16 discernible adverse impact on the domestic industry.

17 “(8) SPECIAL RULE FOR REGIONAL INDUS-
18 TRIES.—In a review under section 751 (b) or (c) in-
19 volving a regional industry, the Commission may
20 base its determination on the regional industry de-
21 fined in the original investigation under this title,
22 another region that satisfies the criteria established
23 in section 771(4)(C), or the United States as a
24 whole. In determining if a regional industry analysis
25 is appropriate for the determination in the review,

1 the Commission shall consider whether the criteria
2 established in section 771(4)(C) are likely to be sat-
3 isfied if the order is revoked or the suspended inves-
4 tigation is terminated.

5 “(b) DETERMINATION OF LIKELIHOOD OF CONTINU-
6 ATION OR RECURRENCE OF A COUNTERAVAILABLE SUB-
7 SIDY.—

8 “(1) IN GENERAL.—In a review conducted
9 under section 751(c), the administering authority
10 shall determine whether revocation of a countervail-
11 ing duty order or termination of a suspended inves-
12 tigation under section 704 would be likely to lead to
13 continuation or recurrence of a countervailable sub-
14 sidy. The administering authority shall consider—

15 “(A) the net countervailable subsidy deter-
16 mined in the investigation and subsequent re-
17 views, and

18 “(B) whether any change in the program
19 which gave rise to the net countervailable sub-
20 sidy described in subparagraph (A) has oc-
21 curred that is likely to affect that net
22 countervailable subsidy.

23 “(2) CONSIDERATION OF OTHER FACTORS.—If
24 good cause is shown, the administering authority
25 shall also consider—

1 “(A) programs determined to provide
2 countervailable subsidies in other investigations
3 or reviews under this title, but only to the ex-
4 tent that such programs—

5 “(i) can potentially be used by the ex-
6 porters or producers subject to the review
7 under section 751(c), and

8 “(ii) did not exist at the time that the
9 countervailing duty order was issued or the
10 suspension agreement was accepted, and

11 “(B) programs newly alleged to provide
12 countervailable subsidies but only to the extent
13 that the administering authority makes an af-
14 firmative countervailing duty determination
15 with respect to such programs and with respect
16 to the exporters or producers subject to the re-
17 view.

18 “(3) NET COUNTERAVAILABLE SUBSIDY.—The
19 administering authority shall provide to the Commis-
20 sion the net countervailable subsidy that is likely to
21 prevail if the order is revoked or the suspended in-
22 vestigation is terminated. The administering author-
23 ity shall normally choose a net countervailable sub-
24 sidy that was determined under section 705 or sub-
25 section (a) or (b)(1) of section 751.

1 “(4) SPECIAL RULE.—

2 “(A) TREATMENT OF ZERO AND DE
3 MINIMIS RATES.—A net countervailable subsidy
4 described in paragraph (1)(A) that is zero or de
5 minimis shall not by itself require the admin-
6 istering authority to determine that revocation
7 of a countervailing duty order or termination of
8 a suspended investigation would not be likely to
9 lead to continuation or recurrence of a
10 countervailable subsidy.

11 “(B) APPLICATION OF DE MINIMIS STAND-
12 ARDS.—For purposes of this paragraph, the ad-
13 ministering authority shall apply the de minimis
14 standards applicable to reviews conducted under
15 subsections (a) and (b)(1) of section 751.

16 “(c) DETERMINATION OF LIKELIHOOD OF CONTINU-
17 ATION OR RECURRENCE OF DUMPING.—

18 “(1) IN GENERAL.—In a review conducted
19 under section 751(c), the administering authority
20 shall determine whether revocation of an antidump-
21 ing duty order or termination of a suspended inves-
22 tigation under section 734 would be likely to lead to
23 continuation or recurrence of sales of the subject
24 merchandise at less than fair value. The administer-
25 ing authority shall consider—

1 “(A) the weighted average dumping mar-
2 gins determined in the investigation and subse-
3 quent reviews, and

4 “(B) the volume of imports of the subject
5 merchandise for the period before and the pe-
6 riod after the issuance of the antidumping duty
7 order or acceptance of the suspension agree-
8 ment.

9 “(2) CONSIDERATION OF OTHER FACTORS.—If
10 good cause is shown, the administering authority
11 shall also consider such other price, cost, market, or
12 economic factors as it deems relevant.

13 “(3) MAGNITUDE OF THE MARGIN OF DUMP-
14 ING.—The administering authority shall provide to
15 the Commission the magnitude of the margin of
16 dumping that is likely to prevail if the order is re-
17 voked or the suspended investigation is terminated.
18 The administering authority shall normally choose a
19 margin that was determined under section 735 or
20 under subsection (a) or (b)(1) of section 751.

21 “(4) SPECIAL RULE.—

22 “(A) TREATMENT OF ZERO OR DE MINIMIS
23 MARGINS.—A dumping margin described in
24 paragraph (1)(A) that is zero or de minimis
25 shall not by itself require the administering au-

1 thority to determine that revocation of an anti-
2 dumping duty order or termination of a sus-
3 pended investigation would not be likely to lead
4 to continuation or recurrence of sales at less
5 than fair value.

6 “(B) APPLICATION OF DE MINIMIS STAND-
7 ARDS.—For purposes of this paragraph, the ad-
8 ministering authority shall apply the de minimis
9 standards applicable to reviews conducted under
10 subsections (a) and (b) of section 751.”.

11 (b) AFFIRMATIVE DETERMINATIONS BY DIVIDED
12 COMMISSION.—Section 771(11) (19 U.S.C. 1677(11)) is
13 amended by inserting “, including a determination under
14 section 751,” after “determination by the Commission”.

15 (c) CONFORMING AMENDMENT.—The table of con-
16 tents for title VII is amended by inserting after the item
17 relating to section 751 the following:

 “Sec. 752. Special rules for section 751(b) and 751(c) reviews.”.

18 **SEC. 222. DEFINITIONS.**

19 (a) INDUSTRY.—

20 (1) IN GENERAL.—Subparagraphs (A) and (B)
21 of section 771(4) (19 U.S.C. 1677(4) (A) and (B))
22 are amended to read as follows:

23 “(A) IN GENERAL.—The term ‘industry’
24 means the producers as a whole of a domestic
25 like product, or those producers whose collective

1 output of a domestic like product constitutes a
2 major proportion of the total domestic produc-
3 tion of the product.

4 “(B) RELATED PARTIES.—

5 “(i) If a producer of a domestic like
6 product and an exporter or importer of the
7 subject merchandise are related parties, or
8 if a producer of the domestic like product
9 is also an importer of the subject merchan-
10 dise, the producer may, in appropriate cir-
11 cumstances, be excluded from the industry.

12 “(ii) For purposes of clause (i), a pro-
13 ducer and an exporter or importer shall be
14 considered to be related parties, if—

15 “(I) the producer directly or indi-
16 rectly controls the exporter or im-
17 porter,

18 “(II) the exporter or importer di-
19 rectly or indirectly controls the pro-
20 ducer,

21 “(III) a third party directly or
22 indirectly controls the producer and
23 the exporter or importer, or

24 “(IV) the producer and the ex-
25 porter or importer directly or indi-

1 rectly control a third party and there
2 is reason to believe that the relation-
3 ship causes the producer to act dif-
4 ferently than a nonrelated producer.

5 For purposes of this subparagraph, a party
6 shall be considered to directly or indirectly
7 control another party if the party is legally
8 or operationally in a position to exercise
9 restraint or direction over the other
10 party.”.

11 (2) REGIONAL INDUSTRY.—Section 771(4)(C)
12 (19 U.S.C. 1677(4)(C)) is amended by adding at the
13 end the following new sentence: “The term ‘regional
14 industry’ means the domestic producers within a re-
15 gion who are treated as a separate industry under
16 this subparagraph.”.

17 (b) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—

18 (1) IN GENERAL.—Section 771(7)(C)(iii) (19
19 U.S.C. 1677(7)(C)(iii)) is amended—

20 (A) by striking “and” at the end of
21 subclause (III), and

22 (B) by striking the period at the end of
23 subclause (IV) and inserting “, and

1 “(V) in a proceeding under sub-
2 title B, the magnitude of the margin
3 of dumping.”.

4 (2) CAPTIVE PRODUCTION.—Section 771(7)(C)
5 (19 U.S.C. 1677(7)(C)) is amended by striking
6 clause (iv) and inserting the following:

7 “(iv) CAPTIVE PRODUCTION.—If do-
8 mestic producers internally transfer signifi-
9 cant production of the domestic like prod-
10 uct for the production of a downstream ar-
11 ticle and sell significant production of the
12 domestic like product in the merchant
13 market, and the Commission finds that—

14 “(I) the domestic like product
15 produced that is internally transferred
16 for processing into that downstream
17 article does not enter the merchant
18 market for the domestic like product,

19 “(II) the domestic like product is
20 the predominant material input in the
21 production of that downstream article,
22 and

23 “(III) the production of the do-
24 mestic like product sold in the mer-
25 chant market is not generally used in

1 the production of that downstream ar-
2 ticle,
3 then the Commission, in determining mar-
4 ket share and the factors affecting finan-
5 cial performance set forth in clause (iii),
6 shall focus primarily on the merchant mar-
7 ket for the domestic like product.”.

8 (3) TECHNICAL CORRECTION.—Section
9 771(7)(C)(iii) is amended by striking “subparagraph
10 (B)(iii)” and inserting “subparagraph (B)(i)(III)”.

11 (c) DETERMINATION OF THREAT OF INJURY.—
12 Clauses (i) and (ii) of section 771(7)(F) (19 U.S.C.
13 1677(7)(F) (i) and (ii)) are amended to read as follows:

14 “(i) IN GENERAL.—In determining
15 whether an industry in the United States
16 is threatened with material injury by rea-
17 son of imports (or sales for importation) of
18 the subject merchandise, the Commission
19 shall consider, among other relevant eco-
20 nomic factors—

21 “(I) if a countervailable subsidy
22 is involved, such information as may
23 be presented to it by the administer-
24 ing authority as to the nature of the
25 subsidy (particularly as to whether the

1 countervailable subsidy is a subsidy
2 described in Article 3 or 6.1 of the
3 Subsidies Agreement), and whether
4 imports of the subject merchandise
5 are likely to increase,

6 “(II) any existing unused produc-
7 tion capacity or imminent, substantial
8 increase in production capacity in the
9 exporting country indicating the likeli-
10 hood of substantially increased im-
11 ports of the subject merchandise into
12 the United States, taking into account
13 the availability of other export mar-
14 kets to absorb any additional exports,

15 “(III) a significant rate of in-
16 crease of the volume or market pene-
17 tration of imports of the subject mer-
18 chandise indicating the likelihood of
19 substantially increased imports,

20 “(IV) whether imports of the
21 subject merchandise are entering at
22 prices that are likely to have a signifi-
23 cant depressing or suppressing effect
24 on domestic prices, and are likely to
25 increase demand for further imports,

1 “(V) inventories of the subject
2 merchandise,

3 “(VI) the potential for product-
4 shifting if production facilities in the
5 foreign country, which can be used to
6 produce the subject merchandise, are
7 currently being used to produce other
8 products,

9 “(VII) in any investigation under
10 this title which involves imports of
11 both a raw agricultural product (with-
12 in the meaning of paragraph
13 (4)(E)(iv)) and any product processed
14 from such raw agricultural product,
15 the likelihood that there will be in-
16 creased imports, by reason of product
17 shifting, if there is an affirmative de-
18 termination by the Commission under
19 section 705(b)(1) or 735(b)(1) with
20 respect to either the raw agricultural
21 product or the processed agricultural
22 product (but not both),

23 “(VIII) the actual and potential
24 negative effects on the existing devel-
25 opment and production efforts of the

1 domestic industry, including efforts to
2 develop a derivative or more advanced
3 version of the domestic like product,
4 and

5 “(IX) any other demonstrable ad-
6 verse trends that indicate the prob-
7 ability that there is likely to be mate-
8 rial injury by reason of imports (or
9 sale for importation) of the subject
10 merchandise (whether or not it is ac-
11 tually being imported at the time).

12 “(ii) BASIS FOR DETERMINATION.—

13 The Commission shall consider the factors
14 set forth in clause (i) as a whole in making
15 a determination of whether further
16 dumped or subsidized imports are immi-
17 nent and whether material injury by rea-
18 son of imports would occur unless an
19 order is issued or a suspension agreement
20 is accepted under this title. The presence
21 or absence of any factor which the Com-
22 mission is required to consider under
23 clause (i) shall not necessarily give decisive
24 guidance with respect to the determination.
25 Such a determination may not be made on

1 the basis of mere conjecture or suppo-
2 sition.”.

3 (d) NEGLIGIBLE IMPORTS.—Section 771 (19 U.S.C.
4 1677) is amended—

5 (1) in paragraph (7) by striking clause (v) of
6 subparagraph (C), and

7 (2) by adding at the end the following:

8 “(24) NEGLIGIBLE IMPORTS.—

9 “(A) IN GENERAL.—

10 “(i) LESS THAN 3 PERCENT.—Except
11 as provided in clauses (ii) and (iv), imports
12 from a country of merchandise correspond-
13 ing to a domestic like product identified by
14 the Commission are ‘negligible’ if such im-
15 ports account for less than 3 percent of the
16 volume of all such merchandise imported
17 into the United States in the most recent
18 12-month period for which data are avail-
19 able that precedes—

20 “(I) the filing of the petition
21 under section 702(b) or 732(b), or

22 “(II) the initiation of the inves-
23 tigation, if the investigation was initi-
24 ated under section 702(a) or 732(a).

1 “(ii) EXCEPTION.—Imports that
2 would otherwise be negligible under clause
3 (i) shall not be negligible if the aggregate
4 volume of imports of the merchandise from
5 all countries described in clause (i) with re-
6 spect to which investigations were initiated
7 on the same day exceeds 7 percent of the
8 volume of all such merchandise imported
9 into the United States during the applica-
10 ble 12-month period.

11 “(iii) DETERMINATION OF AGGREGATE VOLUME.—In determining aggregate
12 volume under clause (ii) or (iv), the Com-
13 mission shall not consider imports from
14 any country specified in paragraph
15 (7)(G)(ii).
16

17 “(iv) NEGLIGIBILITY IN THREAT
18 ANALYSIS.—Notwithstanding clauses (i)
19 and (ii), the Commission shall not treat
20 imports as negligible if it determines that
21 there is a potential that imports from a
22 country described in clause (i) will immi-
23 nently account for more than 3 percent of
24 the volume of all such merchandise im-
25 ported into the United States, or that the

1 aggregate volumes of imports from all
2 countries described in clause (ii) will immi-
3 nently exceed 7 percent of the volume of
4 all such merchandise imported into the
5 United States. The Commission shall con-
6 sider such imports only for purposes of de-
7 termining threat of material injury.

8 “(B) NEGLIGIBILITY FOR CERTAIN COUN-
9 TRIES IN COUNTERVAILING DUTY INVESTIGA-
10 TIONS.—In the case of an investigation under
11 section 701, subparagraph (A) shall be applied
12 to imports of subject merchandise from develop-
13 ing countries by substituting ‘4 percent’ for ‘3
14 percent’ in subparagraph (A)(i) and by sub-
15 stituting ‘9 percent’ for ‘7 percent’ in subpara-
16 graph (A)(ii).

17 “(C) COMPUTATION OF IMPORT VOL-
18 UMES.—In computing import volumes for pur-
19 poses of subparagraphs (A) and (B), the Com-
20 mission may make reasonable estimates on the
21 basis of available statistics.

22 “(D) REGIONAL INDUSTRIES.—In an in-
23 vestigation in which the Commission makes a
24 regional industry determination under para-
25 graph (4)(C), the Commission’s examination

1 under subparagraphs (A) and (B) shall be
2 based upon the volume of subject merchandise
3 exported for sale in the regional market in lieu
4 of the volume of all subject merchandise im-
5 ported into the United States.”.

6 (e) CUMULATION.—Section 771(7) (19 U.S.C.
7 1677(7)) is amended—

8 (1) in subparagraph (F) by striking clause (iv),
9 and

10 (2) by adding at the end the following:

11 “(G) CUMULATION FOR DETERMINING MA-
12 TERIAL INJURY.—

13 “(i) IN GENERAL.—For purposes of
14 clauses (i) and (ii) of subparagraph (C),
15 and subject to clause (ii), the Commission
16 shall cumulatively assess the volume and
17 effect of imports of the subject merchan-
18 dise from all countries with respect to
19 which—

20 “(I) petitions were filed under
21 section 702(b) or 732(b) on the same
22 day,

23 “(II) investigations were initiated
24 under section 702(a) or 732(a) on the
25 same day, or

1 “(III) petitions were filed under
2 section 702(b) or 732(b) and inves-
3 tigations were initiated under section
4 702(a) or 732(a) on the same day,
5 if such imports compete with each other
6 and with domestic like products in the
7 United States market.

8 “(ii) EXCEPTIONS.—The Commission
9 shall not cumulatively assess the volume
10 and effect of imports under clause (i)—

11 “(I) with respect to which the ad-
12 ministering authority has made a pre-
13 liminary negative determination, un-
14 less the administering authority sub-
15 sequently made a final affirmative de-
16 termination with respect to those im-
17 ports before the Commission’s final
18 determination is made;

19 “(II) from any country with re-
20 spect to which the investigation has
21 been terminated;

22 “(III) from any country des-
23 ignated as a beneficiary country under
24 the Caribbean Basin Economic Recov-
25 ery Act (19 U.S.C. 2701 et seq.) for

1 purposes of making a determination
2 with respect to that country, except
3 that the volume and effect of imports
4 of the subject merchandise from such
5 country may be cumulatively assessed
6 with imports of the subject merchan-
7 dise from any other country des-
8 ignated as such a beneficiary country
9 to the extent permitted by clause (i);
10 or

11 “(IV) from any country that is a
12 party to an agreement with the Unit-
13 ed States establishing a free trade
14 area, which entered into force and ef-
15 fect before January 1, 1987, unless
16 the Commission determines that a do-
17 mestic industry is materially injured
18 or threatened with material injury by
19 reason of imports from that country.

20 “(iii) RECORDS IN FINAL INVESTIGA-
21 TIONS.—In each final determination in
22 which it cumulatively assesses the volume
23 and effect of imports under clause (i), the
24 Commission shall make its determinations
25 based on the record compiled in the first

1 investigation in which it makes a final de-
2 termination, except that when the admin-
3 istering authority issues its final deter-
4 mination in a subsequently completed in-
5 vestigation, the Commission shall permit
6 the parties in the subsequent investigation
7 to submit comments concerning the signifi-
8 cance of the administering authority's final
9 determination, and shall include such com-
10 ments and the administering authority's
11 final determination in the record for the
12 subsequent investigation.

13 “(iv) REGIONAL INDUSTRY DETER-
14 MINATIONS.—In an investigation which in-
15 volves a regional industry, and in which
16 the Commission decides that the volume
17 and effect of imports should be cumula-
18 tively assessed under this subparagraph,
19 such assessment shall be based upon the
20 volume and effect of imports into the re-
21 gion or regions determined by the Commis-
22 sion. The provisions of clause (iii) shall
23 apply to such investigations.

24 “(H) CUMULATION FOR DETERMINING
25 THREAT OF MATERIAL INJURY.—To the extent

1 practicable and subject to subparagraph (G)(ii),
2 for purposes of clause (i)(III) and (IV) of sub-
3 paragraph (F), the Commission may cumula-
4 tively assess the volume and price effects of im-
5 ports of the subject merchandise from all coun-
6 tries with respect to which—

7 “(i) petitions were filed under section
8 702(b) or 732(b) on the same day,

9 “(ii) investigations were initiated
10 under section 702(a) or 732(a) on the
11 same day, or

12 “(iii) petitions were filed under sec-
13 tion 702(b) or 732(b) and investigations
14 were initiated under section 702(a) or
15 732(a) on the same day,

16 if such imports compete with each other and
17 with domestic like products in the United
18 States market.”.

19 (f) CONSIDERATION OF POST-PETITION INFORMA-
20 TION.—Section 771(7) (19 U.S.C. 1677(7)), is amended
21 by adding at the end the following:

22 “(I) CONSIDERATION OF POST-PETITION
23 INFORMATION.—The Commission shall consider
24 whether any change in the volume, price effects,
25 or impact of imports of the subject merchandise

1 since the filing of the petition in an investiga-
2 tion under subtitle A or B is related to the
3 pendency of the investigation and, if so, the
4 Commission may reduce the weight accorded to
5 the data for the period after the filing of the
6 petition in making its determination of material
7 injury, threat of material injury, or material re-
8 tardation of the establishment of an industry in
9 the United States.”.

10 (g) INTERESTED PARTY.—Section 771(9) (19 U.S.C.
11 1677(9)) is amended—

12 (1) in subparagraph (A), by inserting “produc-
13 ers, exporters, or” before “importers”, and

14 (2) in subparagraph (B), inserting “or from
15 which such merchandise is exported” after “manu-
16 factured”.

17 (h) ORDINARY COURSE OF TRADE.—Section 771(15)
18 (19 U.S.C. 1677(15)) is amended—

19 (1) by striking “merchandise which is the sub-
20 ject of an investigation” and inserting “subject mer-
21 chandise”; and

22 (2) by adding at the end the following: “The
23 administering authority shall consider the following
24 sales and transactions, among others, to be outside
25 the ordinary course of trade:

1 “(A) Sales disregarded under section
2 773(b)(1).

3 “(B) Transactions disregarded under sec-
4 tion 773(f)(2).”.

5 (i) OTHER DEFINITIONS.—

6 (1) IN GENERAL.—Section 771 (19 U.S.C.
7 1677), as amended by subsection (d), is amended by
8 adding at the end the following:

9 “(25) SUBJECT MERCHANDISE.—The term
10 ‘subject merchandise’ means the class or kind of
11 merchandise that is within the scope of an investiga-
12 tion, a review, a suspension agreement, an order
13 under this title or section 303, or a finding under
14 the Antidumping Act, 1921.

15 “(26) SECTION 303.—The terms ‘section 303’
16 and ‘303’ mean section 303 of this Act as in effect
17 on the day before the effective date of title II of the
18 Uruguay Round Agreements Act.

19 “(27) SUSPENSION AGREEMENT.—The term
20 ‘suspension agreement’ means an agreement de-
21 scribed in section 704(b), 704(c), 734(b), 734(c), or
22 734(l).

23 “(28) EXPORTER OR PRODUCER.—The term
24 ‘exporter or producer’ means the exporter of the
25 subject merchandise, the producer of the subject

1 merchandise, or both where appropriate. For pur-
2 poses of section 773, the term ‘exporter or producer’
3 includes both the exporter of the subject merchand-
4 ise and the producer of the same subject merchand-
5 ise to the extent necessary to accurately calculate
6 the total amount incurred and realized for costs, ex-
7 penses, and profits in connection with production
8 and sale of that merchandise.

9 “(29) WTO AGREEMENT.—The term ‘WTO
10 Agreement’ means the Agreement defined in section
11 2(9) of the Uruguay Round Agreements Act.

12 “(30) WTO MEMBER AND WTO MEMBER COUN-
13 TRY.—The terms ‘WTO member’ and ‘WTO mem-
14 ber country’ mean a state, or separate customs terri-
15 tory (within the meaning of Article XII of the WTO
16 Agreement), with respect to which the United States
17 applies the WTO agreement.

18 “(31) GATT 1994.—The term ‘GATT 1994’
19 means the General Agreement on Tariffs and Trade
20 annexed to the WTO Agreement.

21 “(32) TRADE REPRESENTATIVE.—The term
22 ‘Trade Representative’ means the United States
23 Trade Representative.

1 “(33) AFFILIATED PERSONS.—The following
2 persons shall be considered to be ‘affiliated’ or ‘af-
3 filiated persons’:

4 “(A) Members of a family, including broth-
5 ers and sisters (whether by the whole or half
6 blood), spouse, ancestors, and lineal descend-
7 ants.

8 “(B) Any officer or director of an organi-
9 zation and such organization.

10 “(C) Partners.

11 “(D) Employer and employee.

12 “(E) Any person directly or indirectly own-
13 ing, controlling, or holding with power to vote,
14 5 percent or more of the outstanding voting
15 stock or shares of any organization and such
16 organization.

17 “(F) Two or more persons directly or indi-
18 rectly controlling, controlled by, or under com-
19 mon control with, any person.

20 “(G) Any person who controls any other
21 person and such other person.

22 For purposes of this paragraph, a person shall be
23 considered to control another person if the person is
24 legally or operationally in a position to exercise re-
25 straint or direction over the other person.

1 “(34) DUMPED; DUMPING.—The terms
2 ‘dumped’ and ‘dumping’ refer to the sale or likely
3 sale of goods at less than fair value.”.

4 (2) EXPORTER.—Paragraph (13) of section 771
5 (19 U.S.C. 1677(13)) is repealed.

6 **SEC. 223. EXPORT PRICE AND CONSTRUCTED EXPORT**
7 **PRICE.**

8 Section 772 (19 U.S.C. 1677a) is amended to read
9 as follows:

10 **“SEC. 772. EXPORT PRICE AND CONSTRUCTED EXPORT**
11 **PRICE.**

12 “(a) EXPORT PRICE.—The term ‘export price’ means
13 the price at which the subject merchandise is first sold
14 (or agreed to be sold) before the date of importation by
15 the producer or exporter of the subject merchandise out-
16 side of the United States to an unaffiliated purchaser in
17 the United States or to an unaffiliated purchaser for ex-
18 portation to the United States, as adjusted under sub-
19 section (c).

20 “(b) CONSTRUCTED EXPORT PRICE.—The term ‘con-
21 structed export price’ means the price at which the subject
22 merchandise is first sold (or agreed to be sold) in the Unit-
23 ed States before or after the date of importation by or
24 for the account of the producer or exporter of such mer-
25 chandise or by a seller affiliated with the producer or ex-

1 porter, to a purchaser not affiliated with the producer or
2 exporter, as adjusted under subsections (c) and (d).

3 “(c) ADJUSTMENTS FOR EXPORT PRICE AND CON-
4 STRUCTED EXPORT PRICE.—The price used to establish
5 export price and constructed export price shall be—

6 “(1) increased by—

7 “(A) when not included in such price, the
8 cost of all containers and coverings and all
9 other costs, charges, and expenses incident to
10 placing the subject merchandise in condition
11 packed ready for shipment to the United
12 States,

13 “(B) the amount of any import duties im-
14 posed by the country of exportation which have
15 been rebated, or which have not been collected,
16 by reason of the exportation of the subject mer-
17 chandise to the United States, and

18 “(C) the amount of any countervailing
19 duty imposed on the subject merchandise under
20 subtitle A to offset an export subsidy, and

21 “(2) reduced by—

22 “(A) except as provided in paragraph
23 (1)(C), the amount, if any, included in such
24 price, attributable to any additional costs,
25 charges, or expenses, and United States import

1 duties, which are incident to bringing the sub-
2 ject merchandise from the original place of
3 shipment in the exporting country to the place
4 of delivery in the United States, and

5 “(B) the amount, if included in such price,
6 of any export tax, duty, or other charge im-
7 posed by the exporting country on the expor-
8 tation of the subject merchandise to the United
9 States, other than an export tax, duty, or other
10 charge described in section 771(6)(C).

11 “(d) ADDITIONAL ADJUSTMENTS TO CONSTRUCTED
12 EXPORT PRICE.—For purposes of this section, the price
13 used to establish constructed export price shall also be re-
14 duced by—

15 “(1) the amount of any of the following ex-
16 penses generally incurred by or for the account of
17 the producer or exporter, or the affiliated seller in
18 the United States, in selling the subject merchandise
19 (or subject merchandise to which value has been
20 added)—

21 “(A) commissions for selling the subject
22 merchandise in the United States;

23 “(B) expenses that result from, and bear a
24 direct relationship to, the sale, such as credit
25 expenses, guarantees and warranties;

1 “(C) any selling expenses that the seller
2 pays on behalf of the purchaser;

3 “(D) any selling expenses not deducted
4 under subparagraph (A), (B), or (C);

5 “(2) the cost of any further manufacture or as-
6 sembly (including additional material and labor), ex-
7 cept in circumstances described in subsection (e);
8 and

9 “(3) the profit allocated to the expenses de-
10 scribed in paragraphs (1) and (2).

11 “(e) SPECIAL RULE FOR MERCHANDISE WITH
12 VALUE ADDED AFTER IMPORTATION.—Where the subject
13 merchandise is imported by a person affiliated with the
14 exporter or producer, and the value added in the United
15 States by the affiliated person is likely to exceed substan-
16 tially the value of the subject merchandise, the administer-
17 ing authority shall determine the constructed export price
18 for such merchandise by using one of the following prices
19 if there is a sufficient quantity of sales to provide a rea-
20 sonable basis for comparison and the administering au-
21 thority determines that the use of such sales is appro-
22 priate:

23 “(1) The price of identical subject merchandise
24 sold by the exporter or producer to an unaffiliated
25 person.

1 “(2) The price of other subject merchandise
2 sold by the exporter or producer to an unaffiliated
3 person.

4 If there is not a sufficient quantity of sales to provide a
5 reasonable basis for comparison under paragraph (1) or
6 (2), or the administering authority determines that neither
7 of the prices described in such paragraphs is appropriate,
8 then the constructed export price may be determined on
9 any other reasonable basis.

10 “(f) SPECIAL RULE FOR DETERMINING PROFIT.—

11 “(1) IN GENERAL.—For purposes of subsection
12 (d)(3), profit shall be an amount determined by mul-
13 tiplying the total actual profit by the applicable per-
14 centage.

15 “(2) DEFINITIONS.—For purposes of this sub-
16 section:

17 “(A) APPLICABLE PERCENTAGE.—The
18 term ‘applicable percentage’ means the percent-
19 age determined by dividing the total United
20 States expenses by the total expenses.

21 “(B) TOTAL UNITED STATES EXPENSES.—
22 The term ‘total United States expenses’ means
23 the total expenses described in subsection (d)
24 (1) and (2).

1 “(C) TOTAL EXPENSES.—The term ‘total
2 expenses’ means all expenses in the first of the
3 following categories which applies and which
4 are incurred by or on behalf of the foreign pro-
5 ducer and foreign exporter of the subject mer-
6 chandise and by or on behalf of the United
7 States seller affiliated with the producer or ex-
8 porter with respect to the production and sale
9 of such merchandise:

10 “(i) The expenses incurred with re-
11 spect to the subject merchandise sold in
12 the United States and the foreign like
13 product sold in the exporting country if
14 such expenses were requested by the ad-
15 ministering authority for the purpose of es-
16 tablishing normal value and constructed
17 export price.

18 “(ii) The expenses incurred with re-
19 spect to the narrowest category of mer-
20 chandise sold in the United States and the
21 exporting country which includes the sub-
22 ject merchandise.

23 “(iii) The expenses incurred with re-
24 spect to the narrowest category of mer-

1 chandise sold in all countries which in-
2 cludes the subject merchandise.

3 “(D) TOTAL ACTUAL PROFIT.—The term
4 ‘total actual profit’ means the total profit
5 earned by the foreign producer, exporter, and
6 affiliated parties described in subparagraph (C)
7 with respect to the sale of the same merchan-
8 dise for which total expenses are determined
9 under such subparagraph.”.

10 **SEC. 224. NORMAL VALUE.**

11 Section 773 (19 U.S.C. 1677b) is amended to read
12 as follows:

13 **“SEC. 773. NORMAL VALUE.**

14 “(a) DETERMINATION.—In determining under this
15 title whether subject merchandise is being, or is likely to
16 be, sold at less than fair value, a fair comparison shall
17 be made between the export price or constructed export
18 price and normal value. In order to achieve a fair compari-
19 son with the export price or constructed export price, nor-
20 mal value shall be determined as follows:

21 “(1) DETERMINATION OF NORMAL VALUE.—

22 “(A) IN GENERAL.—The normal value of
23 the subject merchandise shall be the price de-
24 scribed in subparagraph (B), at a time reason-
25 ably corresponding to the time of the sale used

1 to determine the export price or constructed ex-
2 port price under section 772(a) or (b).

3 “(B) PRICE.—The price referred to in sub-
4 paragraph (A) is—

5 “(i) the price at which the foreign like
6 product is first sold (or, in the absence of
7 a sale, offered for sale) for consumption in
8 the exporting country, in the usual com-
9 mercial quantities and in the ordinary
10 course of trade and, to the extent prac-
11 ticable, at the same level of trade as the
12 export price or constructed export price, or

13 “(ii) in a case to which subparagraph
14 (C) applies, the price at which the foreign
15 like product is so sold (or offered for sale)
16 for consumption in a country other than
17 the exporting country or the United States,
18 if—

19 “(I) such price is representative,

20 “(II) the aggregate quantity (or,
21 if quantity is not appropriate, value)
22 of the foreign like product sold by the
23 exporter or producer in such other
24 country is 5 percent or more of the
25 aggregate quantity (or value) of the

1 subject merchandise sold in the
2 United States or for export to the
3 United States, and

4 “(III) the administering author-
5 ity does not determine that the par-
6 ticular market situation in such other
7 country prevents a proper comparison
8 with the export price or constructed
9 export price.

10 “(C) THIRD COUNTRY SALES.—This sub-
11 paragraph applies when—

12 “(i) the foreign like product is not
13 sold (or offered for sale) for consumption
14 in the exporting country as described in
15 subparagraph (B)(i),

16 “(ii) the administering authority de-
17 termines that the aggregate quantity (or, if
18 quantity is not appropriate, value) of the
19 foreign like product sold in the exporting
20 country is insufficient to permit a proper
21 comparison with the sales of the subject
22 merchandise to the United States, or

23 “(iii) the particular market situation
24 in the exporting country does not permit a

1 proper comparison with the export price or
2 constructed export price.

3 For purposes of clause (ii), the aggregate quan-
4 tity (or value) of the foreign like product sold
5 in the exporting country shall normally be con-
6 sidered to be insufficient if such quantity (or
7 value) is less than 5 percent of the aggregate
8 quantity (or value) of sales of the subject mer-
9 chandise to the United States.

10 “(2) FICTITIOUS MARKETS.—No pretended sale
11 or offer for sale, and no sale or offer for sale in-
12 tended to establish a fictitious market, shall be
13 taken into account in determining normal value. The
14 occurrence of different movements in the prices at
15 which different forms of the foreign like product are
16 sold (or, in the absence of sales, offered for sale) in
17 the exporting country after the issuance of an anti-
18 dumping duty order may be considered by the ad-
19 ministering authority as evidence of the establish-
20 ment of a fictitious market for the foreign like prod-
21 uct if the movement in such prices appears to reduce
22 the amount by which the normal value exceeds the
23 export price (or the constructed export price) of the
24 subject merchandise.

1 “(3) EXPORTATION FROM AN INTERMEDIATE
2 COUNTRY.—Where the subject merchandise is ex-
3 ported to the United States from an intermediate
4 country, normal value shall be determined in the in-
5 termediate country, except that normal value may be
6 determined in the country of origin of the subject
7 merchandise if—

8 “(A) the producer knew at the time of the
9 sale that the subject merchandise was destined
10 for exportation;

11 “(B) the subject merchandise is merely
12 transshipped through the intermediate country;

13 “(C) sales of the foreign like product in
14 the intermediate country do not satisfy the con-
15 ditions of paragraph (1)(C); or

16 “(D) the foreign like product is not pro-
17 duced in the intermediate country.

18 “(4) USE OF CONSTRUCTED VALUE.—If the ad-
19 ministering authority determines that the normal
20 value of the subject merchandise cannot be deter-
21 mined under paragraph (1)(B)(i), then, notwith-
22 standing paragraph (1)(B)(ii), the normal value of
23 the subject merchandise may be the constructed
24 value of that merchandise, as determined under sub-
25 section (e).

1 “(5) INDIRECT SALES OR OFFERS FOR SALE.—
2 If the foreign like product is sold or, in the absence
3 of sales, offered for sale through an affiliated party,
4 the prices at which the foreign like product is sold
5 (or offered for sale) by such affiliated party may be
6 used in determining normal value.

7 “(6) ADJUSTMENTS.—The price described in
8 paragraph (1)(B) shall be—

9 “(A) increased by the cost of all containers
10 and coverings and all other costs, charges, and
11 expenses incident to placing the subject mer-
12 chandise in condition packed ready for ship-
13 ment to the United States;

14 “(B) reduced by—

15 “(i) when included in the price de-
16 scribed in paragraph (1)(B), the cost of all
17 containers and coverings and all other
18 costs, charges, and expenses incident to
19 placing the foreign like product in condi-
20 tion packed ready for shipment to the
21 place of delivery to the purchaser,

22 “(ii) the amount, if any, included in
23 the price described in paragraph (1)(B),
24 attributable to any additional costs,
25 charges, and expenses incident to bringing

1 the foreign like product from the original
2 place of shipment to the place of delivery
3 to the purchaser, and

4 “(iii) the amount of any taxes im-
5 posed directly upon the foreign like prod-
6 uct or components thereof which have been
7 rebated, or which have not been collected,
8 on the subject merchandise, but only to the
9 extent that such taxes are added to or in-
10 cluded in the price of the foreign like prod-
11 uct, and

12 “(C) increased or decreased by the amount
13 of any difference (or lack thereof) between the
14 export price or constructed export price and the
15 price described in paragraph (1)(B) (other than
16 a difference for which allowance is otherwise
17 provided under this section) that is established
18 to the satisfaction of the administering author-
19 ity to be wholly or partly due to—

20 (i) the fact that the quantities in
21 which the subject merchandise is sold or
22 agreed to be sold to the United States are
23 greater than or less than the quantities in
24 which the foreign like product is sold,
25 agreed to be sold, or offered for sale,

1 “(ii) the fact that merchandise de-
2 scribed in subparagraph (B) or (C) of sec-
3 tion 771(16) is used in determining normal
4 value, or

5 “(iii) other differences in the cir-
6 cumstances of sale.

7 “(7) ADDITIONAL ADJUSTMENTS.—

8 “(A) LEVEL OF TRADE.—The price de-
9 scribed in paragraph (1)(B) shall also be in-
10 creased or decreased to make due allowance for
11 any difference (or lack thereof) between the ex-
12 port price or constructed export price and the
13 price described in paragraph (1)(B) (other than
14 a difference for which allowance is otherwise
15 made under this section) that is shown to be
16 wholly or partly due to a difference in level of
17 trade between the export price or constructed
18 export price and normal value, if the difference
19 in level of trade—

20 “(i) involves the performance of dif-
21 ferent selling activities; and

22 “(ii) is demonstrated to affect price
23 comparability, based on a pattern of con-
24 sistent price differences between sales at

1 different levels of trade in the country in
2 which normal value is determined.

3 In a case described in the preceding sentence,
4 the amount of the adjustment shall be based on
5 the price differences between the two levels of
6 trade in the country in which normal value is
7 determined.

8 “(B) CONSTRUCTED EXPORT PRICE OFF-
9 SET.—When normal value is established at a
10 level of trade which constitutes a more ad-
11 vanced stage of distribution than the level of
12 trade of the constructed export price, but the
13 data available do not provide an appropriate
14 basis to determine under subparagraph (A)(ii) a
15 level of trade adjustment, normal value shall be
16 reduced by the amount of indirect selling ex-
17 penses incurred in the country in which normal
18 value is determined on sales of the foreign like
19 product but not more than the amount of such
20 expenses for which a deduction is made under
21 section 772(d)(1)(D).

22 “(8) ADJUSTMENTS TO CONSTRUCTED
23 VALUE.—Constructed value as determined under
24 subsection (e), may be adjusted, as appropriate, pur-
25 suant to this subsection.

1 “(b) SALES AT LESS THAN COST OF PRODUCTION.—

2 “(1) DETERMINATION; SALES DISREGARDED.—

3 Whenever the administering authority has reason-
4 able grounds to believe or suspect that sales of the
5 foreign like product under consideration for the de-
6 termination of normal value have been made at
7 prices which represent less than the cost of produc-
8 tion of that product, the administering authority
9 shall determine whether, in fact, such sales were
10 made at less than the cost of production. If the ad-
11 ministering authority determines that sales made at
12 less than the cost of production—

13 “(A) have been made within an extended
14 period of time in substantial quantities, and

15 “(B) were not at prices which permit re-
16 covery of all costs within a reasonable period of
17 time,

18 such sales may be disregarded in the determination
19 of normal value. Whenever such sales are dis-
20 regarded, normal value shall be based on the re-
21 maining sales of the foreign like product in the ordi-
22 nary course of trade. If no sales made in the ordi-
23 nary course of trade remain, the normal value shall
24 be based on the constructed value of the merchan-
25 dise.

1 “(2) DEFINITIONS AND SPECIAL RULES.—For
2 purposes of this subsection—

3 “(A) REASONABLE GROUNDS TO BELIEVE
4 OR SUSPECT.—There are reasonable grounds to
5 believe or suspect that sales of the foreign like
6 product were made at prices that are less than
7 the cost of production of the product, if—

8 “(i) in an investigation initiated under
9 section 732 or a review conducted under
10 section 751, an interested party described
11 in subparagraph (C), (D), (E), (F), or (G)
12 of section 771(9) provides information,
13 based upon observed prices or constructed
14 prices or costs, that sales of the foreign
15 like product under consideration for the
16 determination of normal value have been
17 made at prices which represent less than
18 the cost of production of the product; or

19 “(ii) in a review conducted under sec-
20 tion 751 involving a specific exporter, the
21 administering authority disregarded some
22 or all of the exporter’s sales pursuant to
23 paragraph (1) in the investigation or if a
24 review has been completed, in the most re-
25 cently completed review.

1 “(B) EXTENDED PERIOD OF TIME.—The
2 term ‘extended period of time’ means a period
3 that is normally 1 year, but not less than 6
4 months.

5 “(C) SUBSTANTIAL QUANTITIES.—Sales
6 made at prices below the cost of production
7 have been made in substantial quantities if—

8 “(i) the volume of such sales rep-
9 resents 20 percent or more of the volume
10 of sales under consideration for the deter-
11 mination of normal value, or

12 “(ii) the weighted average per unit
13 price of the sales under consideration for
14 the determination of normal value is less
15 than the weighted average per unit cost of
16 production for such sales.

17 “(D) RECOVERY OF COSTS.—If prices
18 which are below the per unit cost of production
19 at the time of sale are above the weighted aver-
20 age per unit cost of production for the period
21 of investigation or review, such prices shall be
22 considered to provide for recovery of costs with-
23 in a reasonable period of time.

1 “(3) CALCULATION OF COST OF PRODUC-
2 TION.—For purposes of this subtitle, the cost of pro-
3 duction shall be an amount equal to the sum of—

4 “(A) the cost of materials and of fabrica-
5 tion or other processing of any kind employed
6 in producing the foreign like product, during a
7 period which would ordinarily permit the pro-
8 duction of that foreign like product in the ordi-
9 nary course of business;

10 “(B) an amount for selling, general, and
11 administrative expenses based on actual data
12 pertaining to production and sales of the for-
13 eign like product by the exporter in question;
14 and

15 “(C) the cost of all containers and cover-
16 ings of whatever nature, and all other expenses
17 incidental to placing the foreign like product in
18 condition packed ready for shipment.

19 For purposes of subparagraph (A), if the normal
20 value is based on the price of the foreign like prod-
21 uct sold for consumption in a country other than the
22 exporting country, the cost of materials shall be de-
23 termined without regard to any internal tax in the
24 exporting country imposed on such materials or their

1 disposition which are remitted or refunded upon ex-
2 portation.

3 “(c) NONMARKET ECONOMY COUNTRIES.—

4 “(1) IN GENERAL.—If—

5 “(A) the subject merchandise is exported
6 from a nonmarket economy country, and

7 “(B) the administering authority finds that
8 available information does not permit the nor-
9 mal value of the subject merchandise to be de-
10 termined under subsection (a),

11 the administering authority shall determine the nor-
12 mal value of the subject merchandise on the basis of
13 the value of the factors of production utilized in pro-
14 ducing the merchandise and to which shall be added
15 an amount for general expenses and profit plus the
16 cost of containers, coverings, and other expenses.
17 Except as provided in paragraph (2), the valuation
18 of the factors of production shall be based on the
19 best available information regarding the values of
20 such factors in a market economy country or coun-
21 tries considered to be appropriate by the administer-
22 ing authority.

23 “(2) EXCEPTION.—If the administering author-
24 ity finds that the available information is inadequate
25 for purposes of determining the normal value of sub-

1 ject merchandise under paragraph (1), the admin-
2 istering authority shall determine the normal value
3 on the basis of the price at which merchandise that
4 is—

5 “(A) comparable to the subject merchan-
6 dise, and

7 “(B) produced in one or more market
8 economy countries that are at a level of eco-
9 nomic development comparable to that of the
10 nonmarket economy country,

11 is sold in other countries, including the United
12 States.

13 “(3) FACTORS OF PRODUCTION.—For purposes
14 of paragraph (1), the factors of production utilized
15 in producing merchandise include, but are not lim-
16 ited to—

17 “(A) hours of labor required,

18 “(B) quantities of raw materials employed,

19 “(C) amounts of energy and other utilities
20 consumed, and

21 “(D) representative capital cost, including
22 depreciation.

23 “(4) VALUATION OF FACTORS OF PRODUC-
24 TION.—The administering authority, in valuing fac-
25 tors of production under paragraph (1), shall utilize,

1 to the extent possible, the prices or costs of factors
2 of production in one or more market economy coun-
3 tries that are—

4 “(A) at a level of economic development
5 comparable to that of the nonmarket economy
6 country, and

7 “(B) significant producers of comparable
8 merchandise.

9 “(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL
10 CORPORATIONS.—Whenever, in the course of an investiga-
11 tion under this title, the administering authority deter-
12 mines that—

13 “(1) subject merchandise exported to the Unit-
14 ed States is being produced in facilities which are
15 owned or controlled, directly or indirectly, by a per-
16 son, firm, or corporation which also owns or con-
17 trols, directly or indirectly, other facilities for the
18 production of the foreign like product which are lo-
19 cated in another country or countries,

20 “(2) subsection (a)(1)(C) applies, and

21 “(3) the normal value of the foreign like prod-
22 uct produced in one or more of the facilities outside
23 the exporting country is higher than the normal
24 value of the foreign like product produced in the fa-
25 cilities located in the exporting country,

1 it shall determine the normal value of the subject mer-
2 chandise by reference to the normal value at which the
3 foreign like product is sold in substantial quantities from
4 one or more facilities outside the exporting country. The
5 administering authority, in making any determination
6 under this paragraph, shall make adjustments for the dif-
7 ference between the cost of production (including taxes,
8 labor, materials, and overhead) of the foreign like product
9 produced in facilities outside the exporting country and
10 costs of production of the foreign like product produced
11 in facilities in the exporting country, if such differences
12 are demonstrated to its satisfaction. For purposes of this
13 subsection, in determining the normal value of the foreign
14 like product produced in a country outside of the exporting
15 country, the administering authority shall determine its
16 price at the time of exportation from the exporting country
17 and shall make any adjustments required by subsection
18 (a) for the cost of all containers and coverings and all
19 other costs, charges, and expenses incident to placing the
20 merchandise in condition packed ready for shipment to the
21 United States by reference to such costs in the exporting
22 country.

23 “(e) CONSTRUCTED VALUE.—For purposes of this
24 title, the constructed value of imported merchandise shall
25 be an amount equal to the sum of—

1 “(1) the cost of materials and fabrication or
2 other processing of any kind employed in producing
3 the merchandise, during a period which would ordi-
4 narily permit the production of the merchandise in
5 the ordinary course of business;

6 “(2)(A) the actual amounts incurred and real-
7 ized by the specific exporter or producer being exam-
8 ined in the investigation or review for selling, gen-
9 eral, and administrative expenses, and for profits, in
10 connection with the production and sale of a foreign
11 like product, in the ordinary course of trade, for con-
12 sumption in the foreign country, or

13 “(B) if actual data are not available with re-
14 spect to the amounts described in subparagraph (A),
15 then—

16 “(i) the actual amounts incurred and real-
17 ized by the specific exporter or producer being
18 examined in the investigation or review for sell-
19 ing, general, and administrative expenses, and
20 for profits, in connection with the production
21 and sale, for consumption in the foreign coun-
22 try, of merchandise that is in the same general
23 category of products as the subject merchan-
24 dise,

1 “(ii) the weighted average of the actual
2 amounts incurred and realized by exporters or
3 producers that are subject to the investigation
4 or review (other than the exporter or producer
5 described in clause (i)) for selling, general, and
6 administrative expenses, and for profits, in con-
7 nection with the production and sale of a for-
8 eign like product, in the ordinary course of
9 trade, for consumption in the foreign country,
10 or

11 “(iii) the amounts incurred and realized
12 for selling, general, and administrative ex-
13 penses, and for profits, based on any other rea-
14 sonable method, except that the amount allowed
15 for profit may not exceed the amount normally
16 realized by exporters or producers (other than
17 the exporter or producer described in clause (i))
18 in connection with the sale, for consumption in
19 the foreign country, of merchandise that is in
20 the same general category of products as the
21 subject merchandise ; and

22 “(3) the cost of all containers and coverings of
23 whatever nature, and all other expenses incidental to
24 placing the subject merchandise in condition packed
25 ready for shipment to the United States.

1 For purposes of paragraph (1), the cost of materials shall
2 be determined without regard to any internal tax in the
3 exporting country imposed on such materials or their dis-
4 position which are remitted or refunded upon exportation
5 of the subject merchandise produced from such materials.

6 “(f) SPECIAL RULES FOR CALCULATION OF COST OF
7 PRODUCTION AND FOR CALCULATION OF CONSTRUCTED
8 VALUE.—For purposes of subsections (b) and (e)—

9 “(1) COSTS.—

10 “(A) IN GENERAL.—Costs shall normally
11 be calculated based on the records of the ex-
12 porter or producer of the merchandise, if such
13 records are kept in accordance with the gen-
14 erally accepted accounting principles of the ex-
15 porting country (or the producing country,
16 where appropriate) and reasonably reflect the
17 costs associated with the production and sale of
18 the merchandise. The administering authority
19 shall consider all available evidence on the prop-
20 er allocation of costs, including that which is
21 made available by the exporter or producer on
22 a timely basis, if such allocations have been his-
23 torically used by the exporter or producer, in
24 particular for establishing appropriate amorti-
25 zation and depreciation periods, and allowances

1 for capital expenditures and other development
2 costs.

3 “(B) NONRECURRING COSTS.—Costs shall
4 be adjusted appropriately for those non-
5 recurring costs that benefit current or future
6 production, or both.

7 “(C) STARTUP COSTS.—

8 “(i) IN GENERAL.—Costs shall be ad-
9 justed appropriately for circumstances in
10 which costs incurred during the time pe-
11 riod covered by the investigation or review
12 are affected by startup operations.

13 “(ii) STARTUP OPERATIONS.—Adjust-
14 ments shall be made for startup operations
15 only where—

16 “(I) a producer is using new pro-
17 duction facilities or producing a new
18 product that requires substantial ad-
19 ditional investment, and

20 “(II) production levels are limited
21 by technical factors associated with
22 the initial phase of commercial pro-
23 duction.

24 For purposes of subclause (II), the initial
25 phase of commercial production ends at

1 the end of the startup period. In determin-
2 ing whether commercial production levels
3 have been achieved, the administering au-
4 thority shall consider factors unrelated to
5 startup operations that might affect the
6 volume of production processed, such as
7 demand, seasonality, or business cycles.

8 “(iii) ADJUSTMENT FOR STARTUP OP-
9 ERATIONS.—The adjustment for startup
10 operations shall be made by substituting
11 the unit production costs incurred with re-
12 spect to the merchandise at the end of the
13 startup period for the unit production
14 costs incurred during the startup period. If
15 the startup period extends beyond the pe-
16 riod of the investigation or review under
17 this title, the administering authority shall
18 use the most recent cost of production data
19 that it reasonably can obtain, analyze, and
20 verify without delaying the timely comple-
21 tion of the investigation or review. For
22 purposes of this subparagraph, the startup
23 period ends at the point at which the level
24 of commercial production that is char-

1 acteristic of the merchandise, producer, or
2 industry concerned is achieved.

3 “(2) TRANSACTIONS DISREGARDED.—A trans-
4 action directly or indirectly between affiliated per-
5 sons may be disregarded if, in the case of any ele-
6 ment of value required to be considered, the amount
7 representing that element does not fairly reflect the
8 amount usually reflected in sales of merchandise
9 under consideration in the market under consider-
10 ation. If a transaction is disregarded under the pre-
11 ceding sentence and no other transactions are avail-
12 able for consideration, the determination of the
13 amount shall be based on the information available
14 as to what the amount would have been if the trans-
15 action had occurred between persons who are not af-
16 filiated.

17 “(3) MAJOR INPUT RULE.—If, in the case of a
18 transaction between affiliated persons involving the
19 production by one of such persons of a major input
20 to the merchandise, the administering authority has
21 reasonable grounds to believe or suspect that an
22 amount represented as the value of such input is
23 less than the cost of production of such input, then
24 the administering authority may determine the value
25 of the major input on the basis of the information

1 available regarding such cost of production, if such
2 cost is greater than the amount that would be deter-
3 mined for such input under paragraph (2).”.

4 **SEC. 225. CURRENCY CONVERSION.**

5 (a) IN GENERAL.—Subtitle D of title VII (19 U.S.C.
6 1677 et seq.) is amended by inserting after section 773
7 the following new section:

8 **“SEC. 773A. CURRENCY CONVERSION.**

9 “(a) IN GENERAL.—In an antidumping proceeding
10 under this title, the administering authority shall convert
11 foreign currencies into United States dollars using the ex-
12 change rate in effect on the date of sale of the subject
13 merchandise, except that, if it is established that a cur-
14 rency transaction on forward markets is directly linked to
15 an export sale under consideration, the exchange rate
16 specified with respect to such currency in the forward sale
17 agreement shall be used to convert the foreign currency.
18 Fluctuations in exchange rates shall be ignored.

19 “(b) SUSTAINED MOVEMENT IN FOREIGN CURRENCY
20 VALUE.—In an investigation under subtitle B, if there is
21 a sustained movement in the value of the foreign currency
22 relative to the United States dollar, the administering au-
23 thority shall allow exporters at least 60 days to adjust
24 their export prices to reflect such sustained movement.”.

1 (b) CONFORMING AMENDMENT.—The table of con-
2 tents for title VII is amended by inserting after the item
3 relating to section 773 the following new item:

“Sec. 773A. Currency conversion.”.

4 **SEC. 226. PROPRIETARY AND NONPROPRIETARY INFORMA-**
5 **TION.**

6 (a) PROPRIETARY STATUS MAINTAINED.—

7 (1) IN GENERAL.—Section 777(b)(1) (19
8 U.S.C. 1677f(b)(1)) is amended to read as follows:

9 “(1) PROPRIETARY STATUS MAINTAINED.—

10 “(A) IN GENERAL.—Except as provided in
11 subsection (a)(4)(A) and subsection (c), infor-
12 mation submitted to the administering author-
13 ity or the Commission which is designated as
14 proprietary by the person submitting the infor-
15 mation shall not be disclosed to any person
16 without the consent of the person submitting
17 the information, other than—

18 “(i) to an officer or employee of the
19 administering authority or the Commission
20 who is directly concerned with carrying out
21 the investigation in connection with which
22 the information is submitted or any review
23 under this title covering the same subject
24 merchandise, or

1 “(ii) to an officer or employee of the
2 United States Customs Service who is di-
3 rectly involved in conducting an investiga-
4 tion regarding fraud under this title.

5 “(B) ADDITIONAL REQUIREMENTS.—The
6 administering authority and the Commission
7 shall require that information for which propri-
8 etary treatment is requested be accompanied
9 by—

10 “(i) either—

11 “(I) a non-proprietary summary
12 in sufficient detail to permit a reason-
13 able understanding of the substance
14 of the information submitted in con-
15 fidence, or

16 “(II) a statement that the infor-
17 mation is not susceptible to summary
18 accompanied by a statement of the
19 reasons in support of the contention,
20 and

21 “(ii) either—

22 “(I) a statement which permits
23 the administering authority or the
24 Commission to release under adminis-
25 trative protective order, in accordance

1 with subsection (c), the information
2 submitted in confidence, or

3 “(II) a statement to the admin-
4 istering authority or the Commission
5 that the business proprietary informa-
6 tion is of a type that should not be re-
7 leased under administrative protective
8 order.”.

9 (2) SECTION 751 REVIEWS.—Section 777(b) (19
10 U.S.C. 1677f(b)) is amended by adding at the end
11 the following:

12 “(3) SECTION 751 REVIEWS.—Notwithstanding
13 the provisions of paragraph (1), information submit-
14 ted to the administering authority or the Commis-
15 sion in connection with a review under section
16 751(b) or 751(c) which is designated as proprietary
17 by the person submitting the information may, if the
18 review results in the revocation of an order or find-
19 ing (or termination of a suspended investigation)
20 under section 751(d), be used by the agency to
21 which the information was originally submitted in
22 any investigation initiated within 2 years after the
23 date of the revocation or termination pursuant to a
24 petition covering the same subject merchandise.”.

1 (b) UNWARRANTED PROPRIETARY DESIGNATION.—
2 Section 777(b)(2) (19 U.S.C. 1677f(b)(2)) is amended by
3 adding at the end the following new sentence: “In a case
4 in which the administering authority or the Commission
5 returns the information to the person submitting it, the
6 person may thereafter submit other material concerning
7 the subject matter of the returned information if the sub-
8 mission is made within the time otherwise provided for
9 submitting such material.”.

10 **SEC. 227. OPPORTUNITY FOR COMMENT BY CONSUMERS**
11 **AND INDUSTRIAL USERS.**

12 Section 777 (19 U.S.C. 1677f) is amended by adding
13 at the end the following new subsection:

14 “(h) OPPORTUNITY FOR COMMENT BY CONSUMERS
15 AND INDUSTRIAL USERS.—The administering authority
16 and the Commission shall provide an opportunity for in-
17 dustrial users of the subject merchandise and, if the mer-
18 chandise is sold at the retail level, for representative
19 consumer organizations, to submit relevant information to
20 the administering authority concerning dumping or a
21 countervailable subsidy, and to the Commission concern-
22 ing material injury by reason of dumped or subsidized im-
23 ports.”.

1 **SEC. 228. PUBLIC NOTICE AND EXPLANATION OF DETER-**
2 **MINATIONS.**

3 Section 777 (19 U.S.C. 1677f), as amended by sec-
4 tion 227, is amended by adding at the end the following:

5 “(i) PUBLICATION OF DETERMINATIONS; REQUIRE-
6 MENTS FOR FINAL DETERMINATIONS.—

7 “(1) IN GENERAL.—Whenever the administer-
8 ing authority makes a determination under section
9 702 or 732 whether to initiate an investigation, or
10 the administering authority or the Commission
11 makes a preliminary determination under section
12 703 or 733, a final determination under section 705
13 or section 735, a preliminary or final determination
14 in a review under section 751, a determination to
15 suspend an investigation under this title, or a deter-
16 mination under section 753, the administering au-
17 thority or the Commission, as the case may be, shall
18 publish the facts and conclusions supporting that de-
19 termination, and shall publish notice of that deter-
20 mination in the Federal Register.

21 “(2) CONTENTS OF NOTICE OR DETERMINA-
22 TION.—The notice or determination published under
23 paragraph (1) shall include, to the extent applica-
24 ble—

25 “(A) in the case of a determination of the
26 administering authority—

1 “(i) the names of the exporters or
2 producers of the subject merchandise or,
3 when providing such names is impractica-
4 ble, the countries exporting the subject
5 merchandise to the United States,

6 “(ii) a description of the subject mer-
7 chandise that is sufficient to identify the
8 subject merchandise for customs purposes,

9 “(iii)(I) with respect to a determina-
10 tion in an investigation under subtitle A or
11 section 753 or in a review of a countervail-
12 ing duty order, the amount of the
13 countervailable subsidy established and a
14 full explanation of the methodology used in
15 establishing the amount, and

16 “(II) with respect to a determination
17 in an investigation under subtitle B or in
18 a review of an antidumping duty order, the
19 weighted average dumping margins estab-
20 lished and a full explanation of the meth-
21 odology used in establishing such margins,
22 and

23 “(iv) the primary reasons for the de-
24 termination; and

1 “(B) in the case of a determination of the
2 Commission—

3 “(i) considerations relevant to the de-
4 termination of injury, and

5 “(ii) the primary reasons for the de-
6 termination.

7 “(3) ADDITIONAL REQUIREMENTS FOR FINAL
8 DETERMINATIONS.—In addition to the requirements
9 set forth in paragraph (2)—

10 “(A) the administering authority shall in-
11 clude in a final determination described in para-
12 graph (1) an explanation of the basis for its de-
13 termination that addresses relevant arguments,
14 made by interested parties who are parties to
15 the investigation or review (as the case may be),
16 concerning the establishment of dumping or a
17 countervailable subsidy, or the suspension of
18 the investigation, with respect to which the de-
19 termination is made; and

20 “(B) the Commission shall include in a
21 final determination of injury an explanation of
22 the basis for its determination that addresses
23 relevant arguments that are made by interested
24 parties who are parties to the investigation or
25 review (as the case may be) concerning volume,

1 price effects, and impact on the industry of im-
2 ports of the subject merchandise.”.

3 **SEC. 229. SAMPLING AND AVERAGING; DETERMINATION OF**
4 **WEIGHTED AVERAGE DUMPING MARGIN.**

5 (a) IN GENERAL.—Section 777A (19 U.S.C.
6 1677f-1) is amended to read as follows:

7 **“SEC. 777A. SAMPLING AND AVERAGING; DETERMINATION**
8 **OF WEIGHTED AVERAGE DUMPING MARGIN.**

9 “(a) IN GENERAL.—For purposes of determining the
10 export price (or constructed export price) under section
11 772 or the normal value under section 773, and in carry-
12 ing out reviews under section 751, the administering au-
13 thority may—

14 “(1) use averaging and statistically valid sam-
15 ples, if there is a significant volume of sales of the
16 subject merchandise or a significant number or types
17 of products, and

18 “(2) decline to take into account adjustments
19 which are insignificant in relation to the price or
20 value of the merchandise.

21 “(b) SELECTION OF AVERAGES AND SAMPLES.—The
22 authority to select averages and statistically valid samples
23 shall rest exclusively with the administering authority. The
24 administering authority shall, to the greatest extent pos-
25 sible, consult with the exporters and producers regarding

1 the method to be used to select exporters, producers, or
2 types of products under this section.

3 “(c) DETERMINATION OF DUMPING MARGIN.—

4 “(1) GENERAL RULE.—In determining weighted
5 average dumping margins under section 733(d),
6 735(c), or 751(a), the administering authority shall
7 determine the individual weighted average dumping
8 margin for each known exporter and producer of the
9 subject merchandise.

10 “(2) EXCEPTION.—If it is not practicable to
11 make individual weighted average dumping margin
12 determinations under paragraph (1) because of the
13 large number of exporters or producers involved in
14 the investigation or review, the administering au-
15 thority may determine the weighted average dump-
16 ing margins for a reasonable number of exporters or
17 producers by limiting its examination to—

18 “(A) a sample of exporters, producers, or
19 types of products that is statistically valid
20 based on the information available to the ad-
21 ministering authority at the time of selection,
22 or

23 “(B) exporters and producers accounting
24 for the largest volume of the subject merchan-

1 dise from the exporting country that can be
2 reasonably examined.

3 “(d) DETERMINATION OF LESS THAN FAIR
4 VALUE.—

5 “(1) INVESTIGATIONS.—

6 “(A) IN GENERAL.—In an investigation
7 under subtitle B, the administering authority
8 shall determine whether the subject merchan-
9 dise is being sold in the United States at less
10 than fair value—

11 “(i) by comparing the weighted aver-
12 age of the normal values to the weighted
13 average of the export prices (and con-
14 structed export prices) for comparable
15 merchandise, or

16 “(ii) by comparing the normal values
17 of individual transactions to the export
18 prices (or constructed export prices) of in-
19 dividual transactions for comparable mer-
20 chandise.

21 “(B) EXCEPTION.—The administering au-
22 thority may determine whether the subject mer-
23 chandise is being sold in the United States at
24 less than fair value by comparing the weighted
25 average of the normal values to the export

1 prices (or constructed export prices) of individ-
2 ual transactions for comparable merchandise,
3 if—

4 “(i) there is a pattern of export prices
5 (or constructed export prices) for com-
6 parable merchandise that differ signifi-
7 cantly among purchasers, regions, or peri-
8 ods of time, and

9 “(ii) the administering authority ex-
10 plains why such differences cannot be
11 taken into account using a method de-
12 scribed in paragraph (1)(A)(i) or (ii).

13 “(2) REVIEWS.—In a review under section 751,
14 when comparing export prices (or constructed export
15 prices) of individual transactions to the weighted av-
16 erage price of sales of the foreign like product, the
17 administering authority shall limit its averaging of
18 prices to a period not exceeding the calendar month
19 that corresponds most closely to the calendar month
20 of the individual export sale.”.

21 (b) DUMPING MARGIN; WEIGHTED AVERAGE DUMP-
22 ING MARGIN.—Section 771 (19 U.S.C. 1677), as amended
23 by section 222(i), is amended by adding at the end the
24 following new paragraph:

1 “(35) DUMPING MARGIN; WEIGHTED AVERAGE
2 DUMPING MARGIN.—

3 “(A) DUMPING MARGIN.—The term
4 ‘dumping margin’ means the amount by which
5 the normal value exceeds the export price or
6 constructed export price of the subject mer-
7 chandise.

8 “(B) WEIGHTED AVERAGE DUMPING MAR-
9 GIN.—The term ‘weighted average dumping
10 margin’ is the percentage determined by divid-
11 ing the aggregate dumping margins determined
12 for a specific exporter or producer by the aggre-
13 gate export prices and constructed export prices
14 of such exporter or producer.

15 “(C) MAGNITUDE OF THE MARGIN OF
16 DUMPING.—The magnitude of the margin of
17 dumping used by the Commission shall be—

18 “(i) in making a preliminary deter-
19 mination under section 733(a) in an inves-
20 tigation (including any investigation in
21 which the Commission cumulatively as-
22 sesses the volume and effect of imports
23 under paragraph (7)(G)(i)), the dumping
24 margin or margins published by the ad-

1 ministering authority in its notice of initi-
2 ation of the investigation;

3 “(ii) in making a final determination
4 under section 735(b), the dumping margin
5 or margins most recently published by the
6 administering authority prior to the closing
7 of the Commission’s administrative record;

8 “(iii) in a review under section
9 751(b)(2), the most recent dumping mar-
10 gin or margins determined by the admin-
11 istering authority under section 752(c)(3),
12 if any, or under section 733(b) or 735(a);
13 and

14 “(iv) in a review under section 751(c),
15 the dumping margin or margins deter-
16 mined by the administering authority
17 under section 752(c)(3).”.

18 **SEC. 230. ANTICIRCUMVENTION.**

19 (a) IN GENERAL.—Subsections (a) and (b) of section
20 781 (19 U.S.C. 1677j (a) and (b)) are amended to read
21 as follows:

22 “(a) MERCHANDISE COMPLETED OR ASSEMBLED IN
23 THE UNITED STATES.—

24 “(1) IN GENERAL.—If—

1 “(A) merchandise sold in the United
2 States is of the same class or kind as any other
3 merchandise 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,

10 “(B) such merchandise sold in the United
11 States is completed or assembled in the United
12 States from parts or components produced in
13 the foreign country with respect to which such
14 order or finding applies,

15 “(C) the process of assembly or completion
16 in the United States is minor or insignificant,
17 and

18 “(D) the value of the parts or components
19 referred to in subparagraph (B) is a significant
20 portion of the total value of the merchandise,
21 the administering authority, after taking into ac-
22 count any advice provided by the Commission under
23 subsection (e), may include within the scope of such
24 order or finding the imported parts or components
25 referred to in subparagraph (B) that are used in the

1 completion or assembly of the merchandise in the
2 United States at any time such order or finding is
3 in effect.

4 “(2) DETERMINATION OF WHETHER PROCESS
5 IS MINOR OR INSIGNIFICANT.—In determining
6 whether the process of assembly or completion is
7 minor or insignificant under paragraph (1)(C), the
8 administering authority shall take into account—

9 “(A) the level of investment in the United
10 States,

11 “(B) the level of research and development
12 in the United States,

13 “(C) the nature of the production process
14 in the United States,

15 “(D) the extent of production facilities in
16 the United States, and

17 “(E) whether the value of the processing
18 performed in the United States represents a
19 small proportion of the value of the merchan-
20 dise sold in the United States.

21 “(3) FACTORS TO CONSIDER.—In determining
22 whether to include parts or components in a coun-
23 tervailing or antidumping duty order or finding
24 under paragraph (1), the administering authority
25 shall take into account such factors as—

1 “(A) the pattern of trade, including
2 sourcing patterns,

3 “(B) whether the manufacturer or exporter
4 of the parts or components is affiliated with the
5 person who assembles or completes the mer-
6 chandise sold in the United States from the
7 parts or components produced in the foreign
8 country with respect to which the order or find-
9 ing described in paragraph (1) applies, and

10 “(C) whether imports into the United
11 States of the parts or components produced in
12 such foreign country have increased after the
13 initiation of the investigation which resulted in
14 the issuance of such order or finding.

15 “(b) MERCHANDISE COMPLETED OR ASSEMBLED IN
16 OTHER FOREIGN COUNTRIES.—

17 “(1) IN GENERAL.—If—

18 “(A) merchandise imported into the United
19 States is of the same class or kind as any mer-
20 chandise produced in a foreign country that is
21 the subject of—

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

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

1 “(iii) a countervailing duty order is-
2 sued under section 706 or section 303,

3 “(B) before importation into the United
4 States, such imported merchandise is completed
5 or assembled in another foreign country from
6 merchandise which—

7 “(i) is subject to such order or find-
8 ing, or

9 “(ii) is produced in the foreign coun-
10 try with respect to which such order or
11 finding applies,

12 “(C) the process of assembly or completion
13 in the foreign country referred to in subpara-
14 graph (B) is minor or insignificant,

15 “(D) the value of the merchandise pro-
16 duced in the foreign country to which the anti-
17 dumping duty order applies is a significant por-
18 tion of the total value of the merchandise ex-
19 ported to the United States, and

20 “(E) the administering authority deter-
21 mines that action is appropriate under this
22 paragraph to prevent evasion of such order or
23 finding,

24 the administering authority, after taking into ac-
25 count any advice provided by the Commission under

1 subsection (e), may include such imported merchan-
2 dise within the scope of such order or finding at any
3 time such order or finding is in effect.

4 “(2) DETERMINATION OF WHETHER PROCESS
5 IS MINOR OR INSIGNIFICANT.—In determining
6 whether the process of assembly or completion is
7 minor or insignificant under paragraph (1)(C), the
8 administering authority shall take into account—

9 “(A) the level of investment in the foreign
10 country,

11 “(B) the level of research and development
12 in the foreign country,

13 “(C) the nature of the production process
14 in the foreign country,

15 “(D) the extent of production facilities in
16 the foreign country, and

17 “(E) whether the value of the processing
18 performed in the foreign country represents a
19 small proportion of the value of the merchan-
20 dise imported into the United States.

21 “(3) FACTORS TO CONSIDER.—In determining
22 whether to include merchandise assembled or com-
23 pleted in a foreign country in a countervailing duty
24 order or an antidumping duty order or finding under

1 paragraph (1), the administering authority shall
2 take into account such factors as—

3 “(A) the pattern of trade, including
4 sourcing patterns,

5 “(B) whether the manufacturer or exporter
6 of the merchandise described in paragraph
7 (1)(B) is affiliated with the person who uses the
8 merchandise described in paragraph (1)(B) to
9 assemble or complete in the foreign country the
10 merchandise that is subsequently imported into
11 the United States, and

12 “(C) whether imports into the foreign
13 country of the merchandise described in para-
14 graph (1)(B) have increased after the initiation
15 of the investigation which resulted in the issu-
16 ance of such order or finding.”.

17 (b) TIME LIMITS FOR ADMINISTERING AUTHORITY
18 DETERMINATIONS.—Section 781 (19 U.S.C. 1677j) is
19 amended by adding at the end the following:

20 “(f) TIME LIMITS FOR ADMINISTERING AUTHORITY
21 DETERMINATIONS.—The administering authority shall, to
22 the maximum extent practicable, make the determinations
23 under this section within 300 days from the date of the
24 initiation of a countervailing duty or antidumping cir-
25 cumvention inquiry under this section.”.

1 **SEC. 231. EVIDENCE.**

2 (a) CONDUCT OF INVESTIGATIONS AND ADMINISTRA-
3 TIVE REVIEWS.—Subtitle D of title VII (19 U.S.C. 1671)
4 is amended by adding at the end the following new section:

5 **“SEC. 782. CONDUCT OF INVESTIGATIONS AND ADMINIS-
6 TRATIVE REVIEWS.**

7 “(a) TREATMENT OF VOLUNTARY RESPONSES IN
8 COUNTERVAILING OR ANTIDUMPING DUTY INVESTIGA-
9 TIONS AND REVIEWS.—In any investigation under subtitle
10 A or B or a review under section 751(a) in which the ad-
11 ministering authority has, under section 777A(c)(2) or
12 section 777A(e)(2)(A) (whichever is applicable), limited
13 the number of exporters or producers examined, or deter-
14 mined a single country-wide rate, the administering au-
15 thority shall establish an individual countervailable sub-
16 sidy rate or an individual weighted average dumping mar-
17 gin for any exporter or producer not initially selected for
18 individual examination under such sections who submits
19 to the administering authority the information requested
20 from exporters or producers selected for examination, if—

21 “(1) such information is so submitted by the
22 date specified—

23 “(A) for exporters and producers that were
24 initially selected for examination, or

25 “(B) for the foreign government, in a
26 countervailing duty case where the administer-

1 ing authority has determined a single country-
2 wide rate; and

3 “(2) the number of exporters or producers who
4 have submitted such information is not so large that
5 individual examination of such exporters or produc-
6 ers would be unduly burdensome and inhibit the
7 timely completion of the investigation.

8 “(b) CERTIFICATION OF SUBMISSIONS.—Any person
9 providing factual information to the administering author-
10 ity or the Commission in connection with a proceeding
11 under this title on behalf of the petitioner or any other
12 interested party shall certify that such information is ac-
13 curate and complete to the best of that person’s knowl-
14 edge.

15 “(c) DIFFICULTIES IN MEETING REQUIREMENTS.—

16 “(1) NOTIFICATION BY INTERESTED PARTY.—

17 If an interested party, promptly after receiving a re-
18 quest from the administering authority or the Com-
19 mission for information, notifies the administering
20 authority or the Commission (as the case may be)
21 that such party is unable to submit the information
22 requested in the requested form and manner, to-
23 gether with a full explanation and suggested alter-
24 native forms in which such party is able to submit
25 the information, the administering authority or the

1 Commission (as the case may be) shall consider the
2 ability of the interested party to submit the informa-
3 tion in the requested form and manner and may
4 modify such requirements to the extent necessary to
5 avoid imposing an unreasonable burden on that
6 party.

7 “(2) ASSISTANCE TO INTERESTED PARTIES.—
8 The administering authority and the Commission
9 shall take into account any difficulties experienced
10 by interested parties, particularly small companies,
11 in supplying information requested by the admin-
12 istering authority or the Commission in connection
13 with investigations and reviews under this title, and
14 shall provide to such interested parties any assist-
15 ance that is practicable in supplying such informa-
16 tion.

17 “(d) DEFICIENT SUBMISSIONS.—If the administering
18 authority or the Commission determines that a response
19 to a request for information under this title does not com-
20 ply with the request, the administering authority or the
21 Commission (as the case may be) shall promptly inform
22 the person submitting the response of the nature of the
23 deficiency and shall, to the extent practicable, provide that
24 person with an opportunity to remedy or explain the defi-
25 ciency in light of the time limits established for the com-

1 pletion of investigations or reviews under this title. If that
2 person submits further information in response to such
3 deficiency and either—

4 “(1) the administering authority or the Com-
5 mission (as the case may be) finds that such re-
6 sponse is not satisfactory, or

7 “(2) such response is not submitted within the
8 applicable time limits,

9 then the administering authority or the Commission (as
10 the case may be) may, subject to subsection (e), disregard
11 all or part of the original and subsequent responses.

12 “(e) USE OF CERTAIN INFORMATION.—In reaching
13 a determination under section 703, 705, 733, 735, 751,
14 or 753 the administering authority and the Commission
15 shall not decline to consider information that is submitted
16 by an interested party and is necessary to the determina-
17 tion but does not meet all the applicable requirements es-
18 tablished by the administering authority or the Commis-
19 sion, if—

20 “(1) the information is submitted by the dead-
21 line established for its submission,

22 “(2) the information can be verified,

23 “(3) the information is not so incomplete that
24 it cannot serve as a reliable basis for reaching the
25 applicable determination,

1 “(4) the interested party has demonstrated that
2 it acted to the best of its ability in providing the in-
3 formation and meeting the requirements established
4 by the administering authority or the Commission
5 with respect to the information, and

6 “(5) the information can be used without undue
7 difficulties.

8 “(f) NONACCEPTANCE OF SUBMISSIONS.—If the ad-
9 ministering authority or the Commission declines to accept
10 into the record any information submitted in an investiga-
11 tion or review under this title, it shall, to the extent prac-
12 ticable, provide to the person submitting the information
13 a written explanation of the reasons for not accepting the
14 information.

15 “(g) PUBLIC COMMENT ON INFORMATION.—Infor-
16 mation that is submitted on a timely basis to the admin-
17 istering authority or the Commission during the course of
18 a proceeding under this title shall be subject to comment
19 by other parties to the proceeding within such reasonable
20 time as the administering authority or the Commission
21 shall provide. The administering authority and the Com-
22 mission, before making a final determination under section
23 705, 735, 751, or 753 shall cease collecting information
24 and shall provide the parties with a final opportunity to
25 comment on the information obtained by the administer-

1 ing authority or the Commission (as the case may be)
2 upon which the parties have not previously had an oppor-
3 tunity to comment. Comments containing new factual in-
4 formation shall be disregarded.

5 “(h) TERMINATION OF INVESTIGATION OR REVOCA-
6 TION OF ORDER FOR LACK OF INTEREST.—The admin-
7 istering authority may—

8 “(1) terminate an investigation under subtitle A
9 or B with respect to a domestic like product if, prior
10 to publication of an order under section 706 or 736,
11 the administering authority determines that produc-
12 ers accounting for substantially all of the production
13 of that domestic like product have expressed a lack
14 of interest in issuance of an order; and

15 “(2) revoke an order issued under section 706
16 or 736 with respect to a domestic like product, or
17 terminate an investigation suspended under section
18 704 or 734 with respect to a domestic like product,
19 if the administering authority determines that pro-
20 ducers accounting for substantially all of the produc-
21 tion of that domestic like product, have expressed a
22 lack of interest in the order or suspended investiga-
23 tion.

24 “(i) VERIFICATION.—The administering authority
25 shall verify all information relied upon in making—

1 “(1) a final determination in an investigation,
2 “(2) a revocation under section 751(d), and
3 “(3) a final determination in a review under
4 section 751(a), if—

5 “(A) verification is timely requested by an
6 interested party as defined in section
7 771(9)(C), (D), (E), (F), or (G), and

8 “(B) no verification was made under this
9 subparagraph during the 2 immediately preced-
10 ing reviews and determinations under section
11 751(a) of the same order, finding, or notice, ex-
12 cept that this clause shall not apply if good
13 cause for verification is shown.”.

14 (b) AVAILABILITY OF NONPROPRIETARY INFORMA-
15 TION.—Section 777(a)(4) (19 U.S.C. 1677f(a)(4)) is
16 amended by striking “may disclose” and inserting “shall
17 disclose”.

18 (c) DETERMINATIONS ON THE BASIS OF THE FACTS
19 AVAILABLE.—Section 776 (19 U.S.C. 1677e) is amended
20 to read as follows:

21 **“SEC. 776. DETERMINATIONS ON THE BASIS OF THE FACTS**

22 **AVAILABLE.**

23 “(a) IN GENERAL.—If—

24 “(1) necessary information is not available on
25 the record, or

1 “(2) an interested party or any other person—

2 “(A) withholds information that has been
3 requested by the administering authority or the
4 Commission under this title,

5 “(B) fails to provide such information by
6 the deadlines for submission of the information
7 or in the form and manner requested, subject to
8 subsections (c)(1) and (e) of section 782,

9 “(C) significantly impedes a proceeding
10 under this title, or

11 “(D) provides such information but the in-
12 formation cannot be verified as provided in sec-
13 tion 782(i),

14 the administering authority and the Commission shall,
15 subject to section 782(d), use the facts otherwise available
16 in reaching the applicable determination under this title.

17 “(b) ADVERSE INFERENCES.—If the administering
18 authority or the Commission (as the case may be) finds
19 that an interested party has failed to cooperate by not act-
20 ing to the best of its ability to comply with a request for
21 information from the administering authority or the Com-
22 mission, the administering authority or the Commission
23 (as the case may be), in reaching the applicable determina-
24 tion under this title, may use an inference that is adverse
25 to the interests of that party in selecting from among the

1 facts otherwise available. Such adverse inference may in-
2 clude reliance on information derived from—

3 “(1) the petition,

4 “(2) a final determination in the investigation
5 under this title,

6 “(3) any previous review under section 751 or
7 determination under section 753, or

8 “(4) any other information placed on the
9 record.

10 “(c) CORROBORATION OF SECONDARY INFORMA-
11 TION.—When the administering authority or the Commis-
12 sion relies on secondary information rather than on infor-
13 mation obtained in the course of an investigation or re-
14 view, the administering authority or the Commission, as
15 the case may be, shall, to the extent practicable, corrobo-
16 rate that information from independent sources that are
17 reasonably at their disposal.”.

18 (d) CONFORMING AMENDMENTS.—

19 (1) Section 777(e) (19 U.S.C. 1677f(e)) is re-
20 pealed.

21 (2) The table of contents for title VII is amend-
22 ed—

23 (A) by amending the item relating to sec-
24 tion 776 to read as follows:

“Sec. 776. Determinations on the basis of the facts available.”;

25 and

1 (B) by inserting after the item relating to
2 section 781 the following new item:

“Sec. 782. Conduct of investigations and administrative reviews.”.

3 **SEC. 232. ANTIDUMPING PETITIONS BY THIRD COUNTRIES.**

4 (a) IN GENERAL.—Subtitle D of title VII (19 U.S.C.
5 1677 et seq.), as amended by section 231(a), is amended
6 by adding at the end the following new section:

7 **“SEC. 783. ANTIDUMPING PETITIONS BY THIRD COUNTRIES.**

8 “(a) FILING OF PETITION.—The government of a
9 WTO member may file with the Trade Representative a
10 petition requesting that an investigation be conducted to
11 determine if—

12 “(1) imports from another country are being
13 sold in the United States at less than fair value, and

14 “(2) an industry in the petitioning country is
15 materially injured by reason of those imports.

16 “(b) INITIATION.—The Trade Representative, after
17 consultation with the administering authority and the
18 Commission and obtaining the approval of the WTO
19 Council for Trade in Goods, shall determine whether to
20 initiate an investigation described in subsection (a).

21 “(c) DETERMINATIONS.—Upon initiation of an inves-
22 tigation under this section, the Trade Representative shall
23 request the following determinations be made according
24 to substantive and procedural requirements specified by

1 the Trade Representative, notwithstanding any other pro-
2 vision of this title:

3 “(1) The administering authority shall deter-
4 mine whether imports into the United States of the
5 subject merchandise are being sold at less than fair
6 value.

7 “(2) The Commission shall determine whether
8 an industry in the petitioning country is materially
9 injured by reason of imports of the subject merchan-
10 dise into the United States.

11 “(d) PUBLIC COMMENT.—An opportunity for public
12 comment shall be provided, as appropriate—

13 “(1) by the Trade Representative, in making
14 the determination required by subsection (b), and

15 “(2) by the administering authority and the
16 Commission, in making the determination required
17 by subsection (c).

18 “(e) ISSUANCE OF ORDER.—If the administering au-
19 thority makes an affirmative determination under para-
20 graph (1) of subsection (c), and the Commission makes
21 an affirmative determination under paragraph (2) of sub-
22 section (c), the administering authority shall issue an anti-
23 dumping duty order in accordance with section 736 and
24 take such other actions as are required by section 736.

1 “(f) **REVIEWS OF DETERMINATIONS.**—For purposes
2 of review under section 516A or review under section 751,
3 if an order is issued under subsection (d), the final deter-
4 minations of the administering authority and the Commis-
5 sion under this section shall be treated as final determina-
6 tions made under section 735.

7 “(g) **ACCESS TO INFORMATION.**—Section 777 shall
8 apply to investigations under this section, to the extent
9 specified by the Trade Representative, after consultation
10 with the administering authority and the Commission.”.

11 (b) **CONFORMING AMENDMENT.**—The table of con-
12 tents for title VII, as amended by section 231(d)(2), is
13 amended by adding after the item relating to section 782
14 the following new item:

“Sec. 783. Antidumping petitions by third countries.”.

15 **SEC. 233. CONFORMING AMENDMENTS.**

16 (a) **TERMINOLOGY.**—

17 (1) **NORMAL VALUE.**—Each of the following
18 sections is amended by striking “foreign market
19 value” each place it appears in the text and in the
20 heading and inserting “normal value”:

21 (A) Section 731 (19 U.S.C. 1673).

22 (B) Section 734 (19 U.S.C. 1673c).

23 (C) Section 736 (19 U.S.C. 1673e).

24 (D) Section 739 (19 U.S.C. 1673h).

25 (E) Section 780 (19 U.S.C. 1677i).

1 (2) EXPORT PRICE.—

2 (A) IN GENERAL.—Each of the following
3 sections is amended by striking “United States
4 price” each place it appears in the text and in
5 the heading and inserting “export price (or the
6 constructed export price)”:

7 (i) Section 731 (19 U.S.C. 1673).

8 (ii) Section 734 (19 U.S.C. 1673c).

9 (iii) Section 736 (19 U.S.C. 1673e).

10 (iv) Section 738 (19 U.S.C. 1673g).

11 (v) Section 739 (19 U.S.C. 1673h).

12 (vi) Section 780 (19 U.S.C. 1677i).

13 (B) EXPORTER’S SALES PRICE.—Section
14 738(b)(3) (19 U.S.C. 1673g(b)(3)) is amended
15 by striking “exporter’s sales price” and insert-
16 ing “constructed export price”.

17 (3) DOMESTIC LIKE PRODUCT.—

18 (A) Each of the following sections is
19 amended by striking “like product” each place
20 it appears in the text and in the heading and
21 inserting “domestic like product”:

22 (i) Section 771(4)(C) and (D) (19
23 U.S.C. 1677(4)(C) and (D)).

24 (ii) Section 771(7)(C)(iii)(IV) (19
25 U.S.C. 1677(7)(C)(iii)(IV)).

1 (iii) Section 771(9) (19 U.S.C.
2 1677(9)).

3 (iv) Section 771(10) (19 U.S.C.
4 1677(10)).

5 (B) Sections 771(7)(B)(i)(II) and (III)
6 and section 771(7)(C)(ii)(I) (19 U.S.C.
7 1677(7)(B)(i)(II) and (III) and (C)(ii)(I)) are
8 amended by striking “like products” and insert-
9 ing “domestic like products”.

10 (4) FOREIGN LIKE PRODUCT.—Section 771(16)
11 (19 U.S.C. 1677(16)) is amended—

12 (A) by striking “such or similar merchan-
13 dise” in the text and inserting “foreign like
14 product”, and

15 (B) by amending the heading to read as
16 follows: “FOREIGN LIKE PRODUCT.”.

17 (5) SUBJECT MERCHANDISE.—

18 (A) Section 701(d) (19 U.S.C. 1671(d)) is
19 amended by striking “a class or kind of mer-
20 chandise subject to a countervailing duty inves-
21 tigation” and inserting “subject merchandise”.

22 (B) Section 702(e) (19 U.S.C. 1671a(e)) is
23 amended by striking “class or kind of merchan-
24 dise that is the subject of the investigation”

1 each place it appears and inserting “subject
2 merchandise”.

3 (C) Section 703(b)(1) (19 U.S.C.
4 1671b(b)(1)) is amended by striking “merchan-
5 dise which is the subject of the investigation”
6 and inserting “subject merchandise”.

7 (D) Section 704(a)(2)(A) (19 U.S.C.
8 1671c(a)(2)(A)) is amended by striking “mer-
9 chandise that is subject to the investigation”
10 and inserting “subject merchandise”.

11 (E) Section 704(b) (19 U.S.C. 1671c(b))
12 is amended by striking “merchandise which is
13 the subject of the investigation” and inserting
14 “subject merchandise”.

15 (F) Section 704(c)(1) (19 U.S.C.
16 1671c(c)(1)) is amended by striking “merchan-
17 dise which is the subject of the investigation”
18 and inserting “subject merchandise”.

19 (G) Section 704(c)(2) (19 U.S.C.
20 1671c(c)(2)) is amended by striking “merchan-
21 dise which is the subject of the investigation”
22 and inserting “subject merchandise”.

23 (H) Section 704(c)(3) (19 U.S.C.
24 1671c(c)(3)) is amended by striking “merchan-

1 dise which is the subject of an investigation”
2 and inserting “subject merchandise”.

3 (I) Section 704(d)(3) (19 U.S.C.
4 1671c(d)(3)) is amended by striking “merchan-
5 dise covered by such agreement” and inserting
6 “subject merchandise”.

7 (J) Section 704(f)(1)(A) (19 U.S.C.
8 1671c(f)(1)(A)) is amended by striking “mer-
9 chandise which is the subject of the investiga-
10 tion” and inserting “subject merchandise”.

11 (K) Subparagraphs (A)(i) and (B) of sec-
12 tion 704(f)(2) (19 U.S.C. 1671c(f)(2)(A)(i) and
13 (B)) are amended by striking “merchandise
14 which is the subject of the investigation” each
15 place it appears and inserting “subject mer-
16 chandise”.

17 (L) Paragraphs (2) and (3) of section
18 704(h) (19 U.S.C. 1671c(h) (2) and (3)) are
19 amended by striking “merchandise which is the
20 subject of the investigation” each place it ap-
21 pears and inserting “subject merchandise”.

22 (M) Section 704(j) (19 U.S.C. 1671c(j)) is
23 amended by striking “merchandise which is the
24 subject of the investigation” and inserting
25 “subject merchandise”.

1 (N) Section 705(a)(1) (19 U.S.C.
2 1671d(a)(1)) is amended by striking “the mer-
3 chandise” and inserting “the subject merchan-
4 dise”.

5 (O) Section 706(a)(2) (19 U.S.C.
6 1671e(a)(2)), as redesignated by section 265, is
7 amended by striking “class or kind of merchan-
8 dise to which it applies” and inserting “subject
9 merchandise”.

10 (P) Section 732(e)(1) (19 U.S.C.
11 1673a(e)(1)) is amended by striking “class or
12 kind of the merchandise which is the subject of
13 the investigation” and inserting “the subject
14 merchandise”.

15 (Q) Section 732(e)(2) (19 U.S.C.
16 1673a(e)(2)) is amended by striking “merchan-
17 dise which is the subject of the investigation”
18 and inserting “subject merchandise”.

19 (R) Section 732(e) (19 U.S.C. 1673a(e)) is
20 amended by striking “class or kind of merchan-
21 dise that is the subject of the investigation”
22 each place it appears and inserting “subject
23 merchandise”.

24 (S) Section 734(a)(2)(A) (19 U.S.C.
25 1673c(a)(2)(A)) is amended by striking “mer-

1 chandise that is subject to the investigation”
2 and inserting “subject merchandise”.

3 (T) Subsections (b), (c)(1), (f)(1)(A),
4 (f)(2)(A)(i), (g)(1), (h)(2), (h)(3), and (j) of
5 section 734 (19 U.S.C 1673c(b), (c)(1),
6 (f)(1)(A), (f)(2)(A)(i), (g)(1), (h)(2), (h)(3),
7 and (j)) are amended by striking “merchandise
8 which is the subject of the investigation” each
9 place it appears and inserting “subject mer-
10 chandise”.

11 (U) Section 734(f)(2)(B) (19 U.S.C.
12 1673c(f)(2)(B)) is amended by striking “mer-
13 chandise subject to the investigation” and in-
14 serting “subject merchandise”.

15 (V) Section 735(a)(1) (19 U.S.C.
16 1673d(a)(1)) is amended by striking “merchan-
17 dise which was the subject of the investigation”
18 and inserting “subject merchandise”.

19 (W) Section 736(a)(2) (19 U.S.C.
20 1673e(a)(2)) is amended by striking “class or
21 kind of merchandise to which it applies” and
22 inserting “subject merchandise”.

23 (X) Section 736(b)(1) (19 U.S.C.
24 1673e(b)(1)) is amended by striking “merchan-

1 dise subject to the antidumping duty order”
2 and inserting “subject merchandise”.

3 (Y) Section 736(b)(2) (19 U.S.C.
4 1673e(b)(2)) is amended by striking “merchan-
5 dise subject to an antidumping duty order” and
6 inserting “subject merchandise”.

7 (Z) Section 762(a)(1) (19 U.S.C.
8 1676a(a)(1)) is amended by striking “merchan-
9 dise subject to the agreement” and inserting
10 “subject merchandise”.

11 (AA) Section 762(b)(2) (19 U.S.C.
12 1676a(b)(2)) is amended by striking “merchan-
13 dise subject to the order” and inserting “sub-
14 ject merchandise”.

15 (BB) Section 771(7)(B)(i)(I) (19 U.S.C.
16 1677(7)(B)(i)(I)) is amended by striking “mer-
17 chandise which is the subject of the investiga-
18 tion” and inserting “subject merchandise”.

19 (CC) Section 771(9)(A) (19 U.S.C.
20 1677(9)(A)) is amended by striking “merchan-
21 dise which is the subject of an investigation
22 under this title” and inserting “subject mer-
23 chandise”.

24 (DD) Section 771(16)(A) (19 U.S.C.
25 1677(16)(A)) is amended by striking “merchan-

1 dise which is the subject of an investigation”
2 and inserting “subject merchandise”.

3 (EE) Section 771(16)(B)(i) (19 U.S.C.
4 1677(16)(B)(i)) is amended by striking “mer-
5 chandise which is the subject of an investiga-
6 tion” and inserting “subject merchandise”.

7 (FF) Section 771(17) (19 U.S.C.
8 1677(17)) is amended by striking “merchandise
9 which is the subject of the investigation” and
10 inserting “subject merchandise”.

11 (GG) Section 771A(c) (19 U.S.C. 1677-
12 1(c)) is amended by striking “merchandise
13 under investigation” and inserting “subject
14 merchandise”.

15 (6) INITIATE.—(A) Each of the following sec-
16 tions is amended by striking “commenced” and in-
17 serting “initiated”:

18 (i) Section 702(a).

19 (ii) Section 702(b)(1).

20 (iii) Section 703(b)(1).

21 (iv) Section 703(c)(1).

22 (v) Section 732(a)(1).

23 (vi) Section 732(a)(2)(D).

24 (vii) Section 732(b)(1).

25 (viii) Section 733(b)(1)(A) and (B).

1 (ix) Section 733(b)(2).

2 (x) Section 733(c)(1).

3 (B) Sections 703(g)(1) and 733(b)(2) are each
4 amended by striking “commencement” and inserting
5 “initiation”.

6 (C) Section 732(a)(2)(B) is amended by strik-
7 ing “commence” and inserting “initiate”.

8 (7) TECHNICAL AMENDMENTS.—The table of
9 contents for title VII is amended—

10 (A) by amending the item relating to sec-
11 tion 772 to read as follows:

“Sec. 772. Export price and constructed export price.”;

12 (B) by striking “Foreign market value” in
13 the item relating to section 773 and inserting
14 “Normal value”, and

15 (C) by inserting after the item relating to
16 section 708 the following new item:

“Sec. 709. Conditional payment of countervailing duty.”.

17 (b) OTHER CONFORMING AMENDMENTS.—

18 (1) WTO MEMBER.—Section 771(7)(F)(iii) (19
19 U.S.C. 1677(7)(F)(iii)) is amended—

20 (A) in subclause (I), by striking “GATT
21 member” and inserting “WTO member”; and

22 (B) in subclause (II)—

1 (i) in the subclause heading, by strik-
2 ing “GATT MEMBER” and inserting
3 “WTO MEMBER”;

4 (ii) by striking “GATT member” and
5 inserting “WTO member”; and

6 (iii) by striking “signatory” and all
7 that follows through “measures)” and in-
8 serting “WTO member”.

9 (2) ADMINISTERING AUTHORITY.—Section
10 771(1) (19 U.S.C. 1677(1)) is amended by striking
11 “the Treasury” and inserting “Commerce”.

12 **SEC. 234. APPLICATION TO CANADA AND MEXICO.**

13 Pursuant to article 1902 of the North American Free
14 Trade Agreement and section 408 of the North American
15 Free Trade Agreement Implementation Act, the amend-
16 ments made by this title shall apply with respect to goods
17 from Canada and Mexico.

18 **Subtitle B—Subsidies Provisions**

19 **PART 1—COUNTERAVAILABLE SUBSIDIES**

20 **SEC. 251. COUNTERAVAILABLE SUBSIDY.**

21 (a) IN GENERAL.—Section 771 (19 U.S.C. 1677) is
22 amended by striking paragraph (5) and inserting the fol-
23 lowing:

24 “(5) COUNTERAVAILABLE SUBSIDY.—

1 “(A) IN GENERAL.—Except as provided in
2 paragraph (5B), a countervailable subsidy is a
3 subsidy described in this paragraph which is
4 specific as described in paragraph (5A).

5 “(B) SUBSIDY DESCRIBED.—A subsidy is
6 described in this paragraph in the case in which
7 an authority—

8 “(i) provides a financial contribution,

9 “(ii) provides any form of income or
10 price support within the meaning of Article
11 XVI of the GATT 1994, or

12 “(iii) makes a payment to a funding
13 mechanism to provide a financial contribu-
14 tion, or entrusts or directs a private entity
15 to make a financial contribution, if provid-
16 ing the contribution would normally be
17 vested in the government and the practice
18 does not differ in substance from practices
19 normally followed by governments,

20 to a person and a benefit is thereby conferred.
21 For purposes of this paragraph and paragraphs
22 (5A) and (5B), the term ‘authority’ means a
23 government of a country or any public entity
24 within the territory of the country.

1 “(C) OTHER FACTORS.—The determina-
2 tion of whether a subsidy exists shall be made
3 without regard to whether the recipient of the
4 subsidy is publicly or privately owned and with-
5 out regard to whether the subsidy is provided
6 directly or indirectly on the manufacture, pro-
7 duction, or export of merchandise. The admin-
8 istering authority is not required to consider
9 the effect of the subsidy in determining whether
10 a subsidy exists under this paragraph.

11 “(D) FINANCIAL CONTRIBUTION.—The
12 term ‘financial contribution’ means—

13 “(i) the direct transfer of funds, such
14 as grants, loans, and equity infusions, or
15 the potential direct transfer of funds or li-
16 abilities, such as loan guarantees,

17 “(ii) foregoing or not collecting reve-
18 nue that is otherwise due, such as granting
19 tax credits or deductions from taxable in-
20 come,

21 “(iii) providing goods or services,
22 other than general infrastructure, or

23 “(iv) purchasing goods.

1 “(E) BENEFIT CONFERRED.—A benefit
2 shall normally be treated as conferred where
3 there is a benefit to the recipient, including—

4 “(i) in the case of an equity infusion,
5 if the investment decision is inconsistent
6 with the usual investment practice of pri-
7 vate investors, including the practice re-
8 garding the provision of risk capital, in the
9 country in which the equity infusion is
10 made,

11 “(ii) in the case of a loan, if there is
12 a difference between the amount the recipi-
13 ent of the loan pays on the loan and the
14 amount the recipient would pay on a com-
15 parable commercial loan that the recipient
16 could actually obtain on the market,

17 “(iii) in the case of a loan guarantee,
18 if there is a difference, after adjusting for
19 any difference in guarantee fees, between
20 the amount the recipient of the guarantee
21 pays on the guaranteed loan and the
22 amount the recipient would pay for a com-
23 parable commercial loan if there were no
24 guarantee by the authority, and

1 “(iv) in the case where goods or serv-
2 ices are provided, if such goods or services
3 are provided for less than adequate remu-
4 neration, and in the case where goods are
5 purchased, if such goods are purchased for
6 more than adequate remuneration.

7 For purposes of clause (iv), the adequacy of re-
8 muneration shall be determined in relation to
9 prevailing market conditions for the good or
10 service being provided or the goods being pur-
11 chased in the country which is subject to the in-
12 vestigation or review. Prevailing market condi-
13 tions include price, quality, availability, market-
14 ability, transportation, and other conditions of
15 purchase or sale.

16 “(F) CHANGE IN OWNERSHIP.—A change
17 in ownership of all or part of a foreign enter-
18 prise or the productive assets of a foreign enter-
19 prise does not by itself require a determination
20 by the administering authority that a past
21 countervailable subsidy received by the enter-
22 prise no longer continues to be countervailable,
23 even if the change in ownership is accomplished
24 through an arm’s length transaction.

25 “(5A) SPECIFICITY.—

1 “(A) IN GENERAL.—A subsidy is specific if
2 it is an export subsidy described in subpara-
3 graph (B) or an import substitution subsidy de-
4 scribed in subparagraph (C), or if it is deter-
5 mined to be specific pursuant to subparagraph
6 (D).

7 “(B) EXPORT SUBSIDY.—An export sub-
8 sidy is a subsidy that is, in law or in fact, con-
9 tingent upon export performance, alone or as 1
10 of 2 or more conditions.

11 “(C) IMPORT SUBSTITUTION SUBSIDY.—
12 An import substitution subsidy is a subsidy that
13 is contingent upon the use of domestic goods
14 over imported goods, alone or as 1 of 2 or more
15 conditions.

16 “(D) DOMESTIC SUBSIDY.—In determining
17 whether a subsidy (other than a subsidy de-
18 scribed in subparagraph (B) or (C)) is a spe-
19 cific subsidy, in law or in fact, to an enterprise
20 or industry within the jurisdiction of the au-
21 thority providing the subsidy, the following
22 guidelines shall apply:

23 “(i) Where the authority providing the
24 subsidy, or the legislation pursuant to
25 which the authority operates, expressly

1 limits access to the subsidy to an enter-
2 prise or industry, the subsidy is specific as
3 a matter of law.

4 “(ii) Where the authority providing
5 the subsidy, or the legislation pursuant to
6 which the authority operates, establishes
7 objective criteria or conditions governing
8 the eligibility for, and the amount of, a
9 subsidy, the subsidy is not specific as a
10 matter of law, if—

11 “(I) eligibility is automatic,

12 “(II) the criteria or conditions
13 for eligibility are strictly followed, and

14 “(III) the criteria or conditions
15 are clearly set forth in the relevant
16 statute, regulation, or other official
17 document so as to be capable of ver-
18 ification.

19 For purposes of this clause, the term ‘ob-
20 jective criteria or conditions’ means criteria
21 or conditions that are neutral and that do
22 not favor one enterprise or industry over
23 another.

24 “(iii) Where there are reasons to be-
25 lieve that a subsidy may be specific as a

1 matter of fact, the subsidy is specific if one
2 or more of the following factors exist:

3 “(I) The actual recipients of the
4 subsidy, whether considered on an en-
5 terprise or industry basis, are limited
6 in number.

7 “(II) An enterprise or industry is
8 a predominant user of the subsidy.

9 “(III) An enterprise or industry
10 receives a disproportionately large
11 amount of the subsidy.

12 “(IV) The manner in which the
13 authority providing the subsidy has
14 exercised discretion in the decision to
15 grant the subsidy indicates that an
16 enterprise or industry is favored over
17 others.

18 In evaluating the factors set forth in
19 subclauses (I), (II), (III), and (IV), the ad-
20 ministering authority shall take into ac-
21 count the extent of diversification of eco-
22 nomic activities within the jurisdiction of
23 the authority providing the subsidy, and
24 the length of time during which the sub-
25 sidy program has been in operation.

1 “(iv) Where a subsidy is limited to an
2 enterprise or industry located within a des-
3 ignated geographical region within the ju-
4 risdiction of the authority providing the
5 subsidy, the subsidy is specific.

6 For purposes of this paragraph and paragraph (5B),
7 any reference to an enterprise or industry is a ref-
8 erence to a foreign enterprise or foreign industry
9 and includes a group of such enterprises or indus-
10 tries.

11 “(5B) CATEGORIES OF NONCOUNTERAVAILABLE
12 SUBSIDIES.—

13 “(A) IN GENERAL.—Notwithstanding the
14 provisions of paragraphs (5) and (5A), in the
15 case of merchandise imported from a Subsidies
16 Agreement country, a subsidy shall be treated
17 as noncountervailable if the administering au-
18 thority determines in an investigation under
19 subtitle A or a review under subtitle C that the
20 subsidy meets all of the criteria described in
21 subparagraph (B), (C), or (D), as the case may
22 be, or the provisions of subparagraph (E)(i)
23 apply.

24 “(B) RESEARCH SUBSIDY.—

1 “(i) IN GENERAL.—Except for a sub-
2 sidy provided on the manufacture, produc-
3 tion, or export of civil aircraft, a subsidy
4 for research activities conducted by a per-
5 son, or by a higher education or research
6 establishment on a contract basis with a
7 person, shall be treated as
8 noncountervailable, if the subsidy covers
9 not more than 75 percent of the costs of
10 industrial research or not more than 50
11 percent of the costs of precompetitive de-
12 velopment activity, and such subsidy is
13 limited exclusively to—

14 “(I) the costs of researchers,
15 technicians, and other supporting
16 staff employed exclusively in the re-
17 search activity,

18 “(II) the costs of instruments,
19 equipment, land, or buildings that are
20 used exclusively and permanently (ex-
21 cept when disposed of on a commer-
22 cial basis) for the research activity,

23 “(III) the costs of consultancy
24 and equivalent services used exclu-
25 sively for the research activity, includ-

1 ing costs for bought-in research, tech-
2 nical knowledge, and patents,

3 “(IV) additional overhead costs
4 incurred directly as a result of the re-
5 search activity, and

6 “(V) other operating costs (such
7 as materials and supplies) incurred di-
8 rectly as a result of the research activ-
9 ity.

10 “(ii) DEFINITIONS.—For purposes of
11 this subparagraph—

12 “(I) INDUSTRIAL RESEARCH.—
13 The term ‘industrial research’ means
14 planned search or critical investiga-
15 tion aimed at the discovery of new
16 knowledge, with the objective that
17 such knowledge may be useful in de-
18 veloping new products, processes, or
19 services, or in bringing about a sig-
20 nificant improvement to existing prod-
21 ucts, processes, or services.

22 “(II) PRECOMPETITIVE DEVEL-
23 OPMENT ACTIVITY.—The term
24 ‘precompetitive development activity’
25 means the translation of industrial re-

1 search findings into a plan, blueprint,
2 or design for new, modified, or im-
3 proved products, processes, or serv-
4 ices, whether intended for sale or use,
5 including the creation of a first proto-
6 type that would not be capable of
7 commercial use. The term also may
8 include the conceptual formulation
9 and design of products, processes, or
10 services alternatives and initial dem-
11 onstration or pilot projects, if these
12 same projects cannot be converted or
13 used for industrial application or com-
14 mercial exploitation. The term does
15 not include routine or periodic alter-
16 ations to existing products, production
17 lines, manufacturing processes, serv-
18 ices, or other ongoing operations even
19 if those alterations may represent im-
20 provements.

21 “(iii) CALCULATION RULES.—

22 “(I) IN GENERAL.—In the case
23 of a research activity that spans both
24 industrial research and precompetitive
25 development activity, the allowable

1 level of the noncountervailable subsidy
2 shall not exceed 62.5 percent of the
3 costs set forth in subclauses (I), (II),
4 (III), (IV), and (V) of clause (i).

5 “(II) TOTAL ELIGIBLE COSTS.—
6 The allowable level of a
7 noncountervailable subsidy described
8 in clause (i) shall be based on the
9 total eligible costs incurred over the
10 duration of a particular project.

11 “(C) SUBSIDY TO DISADVANTAGED RE-
12 GIONS.—

13 “(i) IN GENERAL.—A subsidy pro-
14 vided, pursuant to a general framework of
15 regional development, to a person located
16 in a disadvantaged region within a country
17 shall be treated as noncountervailable, if it
18 is not specific (within the meaning of para-
19 graph (5A)) within eligible regions and if
20 the following conditions are met:

21 “(I) Each region identified as
22 disadvantaged within the territory of
23 a country is a clearly designated, con-
24 tiguous geographical area with a de-

1 finable economic and administrative
2 identity.

3 “(II) Each region is considered a
4 disadvantaged region on the basis of
5 neutral and objective criteria indicat-
6 ing that the region is disadvantaged
7 because of more than temporary cir-
8 cumstances, and such criteria are
9 clearly stated in the relevant statute,
10 regulation, or other official document
11 so as to be capable of verification.

12 “(III) The criteria described in
13 subclause (II) include a measurement
14 of economic development.

15 “(IV) Programs provided within
16 a general framework of regional devel-
17 opment include ceilings on the amount
18 of assistance that can be granted to a
19 subsidized project. Such ceilings are
20 differentiated according to the dif-
21 ferent levels of development of as-
22 sisted regions, and are expressed in
23 terms of investment costs or costs of
24 job creation. Within such ceilings, the
25 distribution of assistance is suffi-

1 ciently broad and even to avoid the
2 predominant use of a subsidy by, or
3 the provision of disproportionately
4 large amounts of a subsidy to, an en-
5 terprise or industry as described in
6 paragraph (5A)(D).

7 “(ii) MEASUREMENT OF ECONOMIC
8 DEVELOPMENT.—For purposes of clause
9 (i), the measurement of economic develop-
10 ment shall be based on one or more of the
11 following factors:

12 “(I) Per capita income, house-
13 hold per capita income, or per capita
14 gross domestic product that does not
15 exceed 85 percent of the average for
16 the country subject to investigation or
17 review.

18 “(II) An unemployment rate that
19 is at least 110 percent of the average
20 unemployment rate for the country
21 subject to investigation or review.

22 The measurement of economic development
23 shall cover a 3-year period, but may be a
24 composite measurement and may include

1 factors other than those set forth in this
2 clause.

3 “(iii) DEFINITIONS.—For purposes of
4 this subparagraph—

5 “(I) GENERAL FRAMEWORK OF
6 REGIONAL DEVELOPMENT.—The term
7 ‘general framework of regional devel-
8 opment’ means that the regional sub-
9 sidy programs are part of an inter-
10 nally consistent and generally applica-
11 ble regional development policy, and
12 that regional development subsidies
13 are not granted in isolated geographi-
14 cal points having no, or virtually no,
15 influence on the development of a re-
16 gion.

17 “(II) NEUTRAL AND OBJECTIVE
18 CRITERIA.—The term ‘neutral and ob-
19 jective criteria’ means criteria that do
20 not favor certain regions beyond what
21 is appropriate for the elimination or
22 reduction of regional disparities within
23 the framework of the regional develop-
24 ment policy.

1 “(D) SUBSIDY FOR ADAPTATION OF EXIST-
2 ING FACILITIES TO NEW ENVIRONMENTAL RE-
3 QUIREMENTS.—

4 “(i) IN GENERAL.—A subsidy that is
5 provided to promote the adaptation of ex-
6 isting facilities to new environmental re-
7 quirements that are imposed by statute or
8 by regulation, and that result in greater
9 constraints and financial burdens on the
10 recipient of the subsidy, shall be treated as
11 noncountervailable, if the subsidy—

12 “(I) is a one-time nonrecurring
13 measure,

14 “(II) is limited to 20 percent of
15 the cost of adaptation,

16 “(III) does not cover the cost of
17 replacing and operating the subsidized
18 investment, a cost that must be fully
19 borne by the recipient,

20 “(IV) is directly linked and pro-
21 portionate to the recipient’s planned
22 reduction of nuisances and pollution,
23 and does not cover any manufacturing
24 cost savings that may be achieved,
25 and

1 “(V) is available to all persons
2 that can adopt the new equipment or
3 production processes.

4 “(ii) EXISTING FACILITIES.—For pur-
5 poses of this subparagraph, the term ‘ex-
6 isting facilities’ means facilities that have
7 been in operation for at least 2 years be-
8 fore the date on which the new environ-
9 mental requirements are imposed.

10 “(E) NOTIFIED SUBSIDY PROGRAM.—

11 “(i) GENERAL RULE.—If a subsidy is
12 provided pursuant to a program that has
13 been notified in accordance with Article
14 8.3 of the Subsidies Agreement, the sub-
15 sidy shall be treated as noncountervailable
16 and shall not be subject to investigation or
17 review under this title.

18 “(ii) EXCEPTION.—Notwithstanding
19 clause (i), a subsidy shall be treated as
20 countervailable if—

21 “(I) the Trade Representative
22 notifies the administering authority
23 that a determination has been made
24 pursuant to Article 8.4 or 8.5 of the
25 Subsidies Agreement that the subsidy,

1 or the program pursuant to which the
2 subsidy was provided, does not satisfy
3 the conditions and criteria of Article
4 8.2 of the Subsidies Agreement; and

5 “(II) the subsidy is specific with-
6 in the meaning of paragraph (5A).

7 “(F) CERTAIN SUBSIDIES ON AGRICUL-
8 TURAL PRODUCTS.—Domestic support meas-
9 ures that are provided with respect to products
10 listed in Annex 1 to the Agreement on Agri-
11 culture, and that the administering authority
12 determines conform fully to the provisions of
13 Annex 2 to that Agreement, shall be treated as
14 noncountervailable. Upon request by the admin-
15 istering authority, the Trade Representative
16 shall provide advice regarding the interpretation
17 and application of Annex 2.

18 “(G) PROVISIONAL APPLICATION.—

19 “(i) Subparagraphs (B), (C), (D), and
20 (E) shall not apply on or after the first
21 day of the month that is 66 months after
22 the WTO Agreement enters into force, un-
23 less the provisions of such subparagraphs
24 are extended pursuant to section 282(c) of
25 the Uruguay Round Agreements Act.

1 “(ii) Subparagraph (F) shall not
2 apply to imports from a WTO member
3 country at the end of the 9-year period be-
4 ginning on January 1, 1995. The Trade
5 Representative shall determine the precise
6 termination date for each WTO member
7 country in accordance with paragraph (i)
8 of Article 1 of the Agreement on Agri-
9 culture and such date shall be notified to
10 the administering authority.”.

11 (b) NET COUNTERAVAILABLE SUBSIDY.—Section
12 771(6) (19 U.S.C. 1677(6)) is amended by inserting
13 “countervailable” before “subsidy” each place it appears
14 in the text and in the heading.

15 **PART 2—REPEAL OF SECTION 303 AND**
16 **CONFORMING AMENDMENTS**

17 **SEC. 261. REPEAL OF SECTION 303.**

18 (a) IN GENERAL.—Section 303 of the Tariff Act of
19 1930 (19 U.S.C. 1303) is repealed effective on the effec-
20 tive date of this title.

21 (b) SAVINGS PROVISIONS.—

22 (1) CONTINUING EFFECT OF LEGAL DOCU-
23 MENTS.—All orders, determinations, and other ad-
24 ministrative actions—

1 (A) which have been issued pursuant to an
2 investigation conducted under section 303 of
3 the Tariff Act of 1930, and

4 (B) which are in effect on the effective
5 date of this title, or were final before such date
6 and are to become effective on or after such
7 date,

8 shall continue in effect according to their terms until
9 modified, terminated, superseded, set aside, or re-
10 voked in accordance with law by the administering
11 authority, the International Trade Commission, or a
12 court of competent jurisdiction, or by operation of
13 law. Except as provided in paragraph (3), such or-
14 ders or determinations shall be subject to review
15 under section 751 of the Tariff Act of 1930 and, to
16 the extent applicable, investigation under section
17 753 of such Act (as added by this title).

18 (2) PROCEEDINGS NOT AFFECTED.—The provi-
19 sions of subsection (a) shall not affect any proceed-
20 ings, including notices of proposed rulemaking,
21 pending before the administering authority or the
22 International Trade Commission on the effective
23 date of this title with respect to such section 303.
24 Orders shall be issued in such proceedings, appeals
25 shall be taken therefrom, and payments shall be

1 made pursuant to such orders, in accordance with
2 such section 303 as in effect on the day before the
3 effective date of this title and, except as provided in
4 paragraph (3), shall be subject to review under sec-
5 tion 751 of the Tariff Act of 1930 and, to the extent
6 applicable, investigation under section 753 of such
7 Act. Orders issued in any such proceedings shall
8 continue in effect until modified, terminated, super-
9 seded, set aside, or revoked in accordance with law
10 by the administering authority, a court of competent
11 jurisdiction, or by operation of law. Nothing in this
12 section shall be deemed to prohibit the discontinu-
13 ance or modification of any such proceeding under
14 the same terms and conditions and to the same ex-
15 tent that such proceeding could have been discon-
16 tinued or modified if this section had not been en-
17 acted.

18 (3) SUITS NOT AFFECTED.—The provisions of
19 subsection (a) shall not affect the review pursuant to
20 section 516A of the Tariff Act of 1930 of a counter-
21 vailing duty order issued pursuant to an investiga-
22 tion conducted under section 303 of such Act or a
23 review of a countervailing duty order issued under
24 section 751 of such Act, if such review is pending

1 or the time for filing such review has not expired on
2 the effective date of this title.

3 (c) DEFINITION OF ADMINISTERING AUTHORITY.—
4 For purposes of this section, the term “administering au-
5 thority” has the meaning given such term by section
6 771(1) of the Tariff Act of 1930.

7 (d) CONFORMING AMENDMENTS.—

8 (1) IN GENERAL.—

9 (A) AMENDMENTS TO TRADE ACT OF
10 1974.—

11 (i) Section 331(d)(3) of the Trade Act
12 of 1974 (19 U.S.C. 1303 note) is repealed.

13 (ii) Section 152(a)(2) of the Trade
14 Act of 1974 (19 U.S.C. 2192(a)(2)) is
15 amended by striking “(A) in the case of”
16 and all that follows through “(B)”.

17 (iii) Section 154(a) of the Trade Act
18 of 1974 (19 U.S.C. 2194(a)) is amended
19 by striking “or section 303(e) of the Tariff
20 Act of 1930,”.

21 (B) AMENDMENTS TO TARIFF ACT OF
22 1930.—The following sections of the Tariff Act
23 of 1930 are amended:

24 (i) Section 315(d) (19 U.S.C.
25 1315(d)) is amended by inserting “(as in

1 effect on the day before the effective date
2 of title II of the Uruguay Round Agree-
3 ments Act) or section 701” after “section
4 303”.

5 (ii) Section 337(b)(3) (19 U.S.C.
6 1337(b)(3)) is amended—

7 (I) by striking “of section 303 or
8 subtitle B of title VII of the Tariff
9 Act of 1930” and inserting “of sub-
10 title B of title VII of this Act”,

11 (II) by striking “section 303,
12 671, or 673” and inserting “section
13 701 or 731”,

14 (III) by striking “section 303,
15 701,” and inserting “section 701”,

16 (IV) by striking “of the Secretary
17 under section 303 of this Act or”, and

18 (V) by striking “matter within
19 such section 303, 701, or” and insert-
20 ing “matter within such section 701
21 or”.

22 (iii) Section 701 (19 U.S.C. 1671) is
23 amended by striking subsection (f).

1 (iv) Section 780(c)(1) (19 U.S.C.
2 1677i(c)(1)) is amended by striking “,
3 732(a), or 303” and inserting “or 732(a)”.

4 (C) OTHER REFERENCES.—Any reference
5 to section 303 in any other Federal law, Execu-
6 tive order, rule, or regulation shall be treated as
7 a reference to section 303 of the Tariff Act of
8 1930 as in effect on the day before the effective
9 date of title II of this Act.

10 (2) EFFECTIVE DATE.—The amendments made
11 by this subsection shall take effect on the effective
12 date of this title.

13 **SEC. 262. IMPOSITION OF COUNTERVAILING DUTIES.**

14 Section 701 (a), (b), and (c) (19 U.S.C. 1671 (a),
15 (b), and (c)) are amended to read as follows:

16 “(a) GENERAL RULE.—If—

17 “(1) the administering authority determines
18 that the government of a country or any public en-
19 tity within the territory of a country is providing, di-
20 rectly or indirectly, a countervailable subsidy with
21 respect to the manufacture, production, or export of
22 a class or kind of merchandise imported, or sold (or
23 likely to be sold) for importation, into the United
24 States, and

1 “(2) in the case of merchandise imported from
2 a Subsidies Agreement country, the Commission de-
3 termines that—

4 “(A) an industry in the United States—

5 “(i) is materially injured, or

6 “(ii) is threatened with material in-
7 jury, or

8 “(B) the establishment of an industry in
9 the United States is materially retarded,

10 by reason of imports of that merchandise or by rea-
11 son of sales (or the likelihood of sales) of that mer-
12 chandise for importation,

13 then there shall be imposed upon such merchandise a
14 countervailing duty, in addition to any other duty imposed,
15 equal to the amount of the net countervailable subsidy.

16 For purposes of this subsection and section 705(b)(1), a
17 reference to the sale of merchandise includes the entering
18 into of any leasing arrangement regarding the merchan-
19 dise that is equivalent to the sale of the merchandise.

20 “(b) SUBSIDIES AGREEMENT COUNTRY.—For pur-
21 poses of this title, the term ‘Subsidies Agreement country’
22 means—

23 “(1) a WTO member country,

24 “(2) a country which the President has deter-
25 mined has assumed obligations with respect to the

1 United States which are substantially equivalent to
2 the obligations under the Subsidies Agreement, or

3 “(3) a country with respect to which the Presi-
4 dent determines that—

5 “(A) there is an agreement in effect be-
6 tween the United States and that country
7 which—

8 “(i) was in force on the date of the
9 enactment of the Uruguay Round Agree-
10 ments Act, and

11 “(ii) requires unconditional most-fa-
12 vored-nation treatment with respect to ar-
13 ticles imported into the United States, and

14 “(B) the agreement described in subpara-
15 graph (A) does not expressly permit—

16 “(i) actions required or permitted by
17 the GATT 1947 or GATT 1994, as de-
18 fined in section 2(1) of the Uruguay
19 Round Agreements Act, or required by the
20 Congress, or

21 “(ii) nondiscriminatory prohibitions or
22 restrictions on importation which are de-
23 signed to prevent deceptive or unfair prac-
24 tices.

1 “(c) COUNTERVAILING DUTY INVESTIGATIONS IN-
2 VOLVING IMPORTS NOT ENTITLED TO A MATERIAL IN-
3 JURY DETERMINATION.—In the case of any article or
4 merchandise imported from a country which is not a Sub-
5 sidies Agreement country—

6 “(1) no determination by the Commission under
7 section 703(a), 704, or 705(b) shall be required,

8 “(2) an investigation may not be suspended
9 under section 704(c) or 704(l),

10 “(3) no determination as to the presence of
11 critical circumstances shall be made under section
12 703(e) or 705(a)(2),

13 “(4) section 706(c) shall not apply,

14 “(5) any reference to a determination described
15 in paragraph (1) or (3), or to the suspension of an
16 investigation under section 704(c) or 704(l), shall be
17 disregarded, and

18 “(6) section 751(c) shall not apply.”.

19 **SEC. 263. DE MINIMIS COUNTERAVAILABLE SUBSIDY.**

20 (a) PRELIMINARY DETERMINATIONS.—Section
21 703(b) (19 U.S.C. 1671b(b)) is amended by adding at the
22 end the following new paragraph:

23 “(4) DE MINIMIS COUNTERAVAILABLE SUB-
24 SIDY.—

1 “(A) GENERAL RULE.—In making a deter-
2 mination under this subsection, the administer-
3 ing authority shall disregard any de minimis
4 countervailable subsidy. For purposes of the
5 preceding sentence, a countervailable subsidy is
6 de minimis if the administering authority deter-
7 mines that the aggregate of the net
8 countervailable subsidies is less than 1 percent
9 ad valorem or the equivalent specific rate for
10 the subject merchandise.

11 “(B) EXCEPTION FOR DEVELOPING COUN-
12 TRIES.—In the case of subject merchandise im-
13 ported from a Subsidies Agreement country
14 (other than a country to which subparagraph
15 (C) applies) designated by the Trade Represent-
16 ative as a developing country in accordance
17 with section 771(36), a countervailable subsidy
18 is de minimis if the administering authority de-
19 termines that the aggregate of the net
20 countervailable subsidies does not exceed 2 per-
21 cent ad valorem or the equivalent specific rate
22 for the subject merchandise.

23 “(C) CERTAIN OTHER DEVELOPING COUN-
24 TRIES.—In the case of subject merchandise im-

1 ported from a Subsidies Agreement country
2 that is—

3 “(i) a least developed country, as de-
4 termined by the Trade Representative in
5 accordance with section 771(36), or

6 “(ii) a developing country with respect
7 to which the Trade Representative has no-
8 tified the administering authority that the
9 country has eliminated its export subsidies
10 on an expedited basis within the meaning
11 of Article 27.11 of the Subsidies Agree-
12 ment,

13 subparagraph (B) shall be applied by substitut-
14 ing ‘3 percent’ for ‘2 percent’.

15 “(D) LIMITATIONS ON APPLICATION OF
16 SUBPARAGRAPH (C).—

17 “(i) IN GENERAL.—In the case of a
18 country described in subparagraph (C)(i),
19 the provisions of subparagraph (C) shall
20 not apply after the date that is 8 years
21 after the date the WTO Agreement enters
22 into force.

23 “(ii) SPECIAL RULE FOR SUBPARA-
24 GRAPH (C)(ii) COUNTRIES.—In the case of
25 a country described in subparagraph

1 (C)(ii), the provisions of subparagraph (C)
2 shall not apply after the earlier of—

3 “(I) the date that is 8 years after
4 the date the WTO Agreement enters
5 into force, or

6 “(II) the date on which the
7 Trade Representative notifies the ad-
8 ministering authority that such coun-
9 try is providing an export subsidy.”.

10 (b) FINAL DETERMINATIONS.—Section 705(a) (19
11 U.S.C. 1671d(a)) is amended by adding at the end the
12 following new paragraph:

13 “(3) DE MINIMIS COUNTERAVAILABLE SUB-
14 SIDY.—In making a determination under this sub-
15 section, the administering authority shall disregard
16 any countervailable subsidy that is de minimis as de-
17 fined in section 703(b)(4).”.

18 **SEC. 264. DETERMINATION OF COUNTERAVAILABLE SUB-**
19 **SIDY RATE.**

20 (a) PRELIMINARY DETERMINATION.—Section 703(d)
21 (19 U.S.C. 1673b(d)) is amended—

22 (1) by striking paragraph (2);

23 (2) by redesignating paragraph (1), as amended
24 by section 215(a)(1), as paragraph (2);

1 (3) by inserting “and” at the end of paragraph
2 (2), as so redesignated; and

3 (4) by inserting before such paragraph (2) the
4 following new paragraph:

5 “(1)(A) shall—

6 “(i) determine an estimated individual
7 countervailable subsidy rate for each exporter
8 and producer individually investigated, and, in
9 accordance with section 705(c)(5), an estimated
10 all-others rate for all exporters and producers
11 not individually investigated and for new ex-
12 porters and producers within the meaning of
13 section 751(a)(2)(B), or

14 “(ii) if section 777A(e)(2)(B) applies, de-
15 termine a single estimated country-wide subsidy
16 rate, applicable to all exporters and producers,
17 and

18 “(B) shall order the posting of a cash deposit,
19 bond, or other security, as the administering author-
20 ity deems appropriate, for each entry of the subject
21 merchandise in an amount based on the estimated
22 individual countervailable subsidy rate, the estimated
23 all-others rate, or the estimated country-wide sub-
24 sidy rate, whichever is applicable.”.

25 (b) FINAL DETERMINATION.—

1 (1) IN GENERAL.—Section 705(c)(1) (19
2 U.S.C. 1671d(c)(1)) is amended—

3 (A) in subparagraph (B)—

4 (i) by redesignating such subpara-
5 graph as subparagraph (C); and

6 (ii) by striking “under paragraphs (1)
7 and (2)” and all that follows through “se-
8 curity” and inserting “the suspension of
9 liquidation under paragraph (2) of section
10 703(d)”;

11 (B) by striking “and” at the end of sub-
12 paragraph (A); and

13 (C) by inserting after subparagraph (A)
14 the following new subparagraph:

15 “(B)(i) the administering authority shall—

16 “(I) determine an estimated individual
17 countervailable subsidy rate for each ex-
18 porter and producer individually inves-
19 tigated, and, in accordance with paragraph
20 (5), an estimated all-others rate for all ex-
21 porters and producers not individually in-
22 vestigated and for new exporters and pro-
23 ducers within the meaning of section
24 751(a)(2)(B), or

1 “(II) if 777A(e)(2)(B) applies, deter-
2 mine a single estimated country-wide sub-
3 sidy rate, applicable to all exporters and
4 producers,

5 “(ii) shall order the posting of a cash de-
6 posit, bond, or other security, as the admin-
7 istering authority deems appropriate, for each
8 entry of the subject merchandise in an amount
9 based on the estimated individual
10 countervailable subsidy rate, the estimated all-
11 others rate, or the estimated country-wide sub-
12 sidy rate, whichever is applicable, and”.

13 (2) METHOD FOR DETERMINING
14 COUNTERAVAILABLE SUBSIDY RATE.—Section 705(c)
15 (19 U.S.C. 1671d(c)) is amended by adding at the
16 end the following new paragraph:

17 “(5) METHOD FOR DETERMINING THE ALL-
18 OTHERS RATE AND THE COUNTRY-WIDE SUBSIDY
19 RATE.—

20 “(A) ALL-OTHERS RATE.—

21 “(i) GENERAL RULE.—For purposes
22 of this subsection and section 703(d), the
23 all-others rate shall be an amount equal to
24 the weighted average countervailable sub-
25 sidy rates established for exporters and

1 producers individually investigated, exclud-
2 ing any zero and de minimis
3 countervailable subsidy rates, and any
4 rates determined entirely under section
5 776.

6 “(ii) EXCEPTION.—If the
7 countervailable subsidy rates established
8 for all exporters and producers individually
9 investigated are zero or de minimis rates,
10 or are determined entirely under section
11 776, the administering authority may use
12 any reasonable method to establish an all-
13 others rate for exporters and producers not
14 individually investigated, including averag-
15 ing the weighted average countervailable
16 subsidy rates determined for the exporters
17 and producers individually investigated.

18 “(B) COUNTRY-WIDE SUBSIDY RATE.—The
19 administering authority may calculate a single
20 country-wide subsidy rate, applicable to all ex-
21 porters and producers, if the administering au-
22 thority limits its examination pursuant to sec-
23 tion 777A(e)(2)(B). The estimated country-wide
24 rate determined under section 703(d)(1)(A)(ii)
25 or paragraph (1)(B)(i)(II) of this subsection

1 shall be based on industry-wide data regarding
2 the use of subsidies determined to be
3 countervailable.”.

4 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) Section 703(b)(2) is amended—

6 (A) by striking “subsection (b)(1)” and in-
7 serting “paragraph (1)”,

8 (B) by striking “subsection 702(b)(3)” and
9 inserting “section 702(b)(3)”,

10 (C) by striking “subsection 703(b)(1)” and
11 inserting “paragraph (1)”, and

12 (D) by striking “section 703(c)” and in-
13 serting “subsection (c) of this section”.

14 (2) Section 703(e)(2) is amended by striking
15 “subsection (d)(1)” and inserting “subsection
16 (d)(2)”.

17 (3) Section 704(f)(2)(A) is amended—

18 (A) in clause (i), by striking “section
19 703(d)(1)” and inserting “section 703(d)(2)”;
20 and

21 (B) in clause (iii), by striking “section
22 703(d)(1)” and inserting “section
23 703(d)(1)(B)”.

24 (4) Section 704(f)(2)(B) is amended—

1 (A) by striking “section 703(d)(1)” and in-
2 serting “section 703(d)(2)”; and

3 (B) by striking “section 703(d)(2)” and
4 inserting “section 703(d)(1)(B)”.

5 (5) Section 704(h)(3) is amended—

6 (A) in subparagraph (A), by striking “sec-
7 tion 703(d)(1)” and inserting “section
8 703(d)(2)”; and

9 (B) in subparagraph (B), by striking “sec-
10 tion 703(d)(2)” and inserting “section
11 703(d)(1)(B)”.

12 (6) Section 704(i)(1)(A) is amended by striking
13 “section 703(d)(1)” and inserting “section
14 703(d)(2)”.

15 (7) Section 705(c)(2) is amended—

16 (A) in subparagraph (A), by striking “sec-
17 tion 703(d)(1)” and inserting “section
18 703(d)(2)”; and

19 (B) in subparagraph (B), by striking “sec-
20 tion 703(d)(2)” and inserting “section
21 703(d)(1)(B)”.

22 (8) Section 705(c)(3)(B) is amended by striking
23 “section 703(d)(2)” and inserting “section
24 703(d)(1)(B)”.

1 (9) Section 706(b)(1) is amended by striking
2 “section 703(d)(1)” each place it appears and in-
3 serting “section 703(d)(2)”.

4 (10) Section 707(a) is amended—

5 (A) by striking “section 703(d)(2)” and in-
6 serting “section 703(d)(1)(B)”, and

7 (B) by striking “Section 703(d)(2)” in the
8 heading and inserting “Section 703(d)(1)(B)”.

9 (11) Section 708 is amended by striking “sec-
10 tion 703(d)(2)” and inserting “section
11 703(d)(1)(B)”.

12 **SEC. 265. ASSESSMENT OF COUNTERVAILING DUTY.**

13 Section 706(a) (19 U.S.C. 1671e(a)) is amended—

14 (1) by striking paragraph (2); and

15 (2) by redesignating paragraphs (3) and (4) as
16 paragraphs (2) and (3), respectively.

17 **SEC. 266. NATURE OF COUNTERAVAILABLE SUBSIDY.**

18 Section 771(7)(E)(i) (19 U.S.C. 1677(7)(E)(i)) is
19 amended to read as follows:

20 “(i) NATURE OF COUNTERAVAILABLE
21 SUBSIDY.—In determining whether there is
22 a threat of material injury, the Commis-
23 sion shall consider information provided to
24 it by the administering authority regarding
25 the nature of the countervailable subsidy

1 granted by a foreign country (particularly
2 whether the countervailable subsidy is a
3 subsidy described in Article 3 or 6.1 of the
4 Subsidies Agreement) and the effects likely
5 to be caused by the countervailable sub-
6 sidy.”.

7 **SEC. 267. DEFINITION OF DEVELOPING AND LEAST-DEVEL-**
8 **OPED COUNTRY.**

9 Section 771 (19 U.S.C. 1677), as amended, is
10 amended by adding at the end the following new para-
11 graph:

12 “(36) DEVELOPING AND LEAST DEVELOPED
13 COUNTRY.—

14 “(A) DEVELOPING COUNTRY.—The term
15 ‘developing country’ means a country des-
16 ignated as a developing country by the Trade
17 Representative.

18 “(B) LEAST DEVELOPED COUNTRY.—The
19 term ‘least developed country’ means a country
20 which the Trade Representative determines is—

21 “(i) a country referred to as a least
22 developed country within the meaning of
23 paragraph (a) of Annex VII to the Sub-
24 sidies Agreement, or

1 “(ii) any other country listed in Annex
2 VII to the Subsidies Agreement, but only
3 if the country has a per capita gross na-
4 tional product of less than \$1,000 per
5 annum as measured by the most recent
6 data available from the World Bank.

7 “(C) PUBLICATION OF LIST.—The Trade
8 Representative shall publish in the Federal Reg-
9 ister, and update as necessary, a list of—

10 “(i) developing countries that have
11 eliminated their export subsidies on an ex-
12 pedited basis within the meaning of Article
13 27.11 of the Subsidies Agreement, and

14 “(ii) countries determined by the
15 Trade Representative to be least developed
16 or developing countries.

17 “(D) FACTORS TO CONSIDER.—In deter-
18 mining whether a country is a developing coun-
19 try under subparagraph (A), the Trade Rep-
20 resentative shall consider such economic, trade,
21 and other factors which the Trade Representa-
22 tive considers appropriate, including the level of
23 economic development of such country (the as-
24 sessment of which shall include a review of the

1 country's per capita gross national product)
2 and the country's share of world trade.

3 “(E) LIMITATION ON DESIGNATION.—A
4 determination that a country is a developing or
5 least developed country pursuant to this para-
6 graph shall be for purposes of this title only
7 and shall not affect the determination of a
8 country's status as a developing or least devel-
9 oped country with respect to any other law.”.

10 **SEC. 268. UPSTREAM SUBSIDIES.**

11 Section 771A(a) (19 U.S.C. 1677-1(a)) is amend-
12 ed—

13 (1) by striking the matter preceding paragraph
14 (1) and paragraph (1) and inserting the following:

15 “(a) DEFINITION.—The term ‘upstream subsidy’
16 means any countervailable subsidy, other than an export
17 subsidy, that—

18 “(1) is paid or bestowed by an authority (as de-
19 fined in section 771(5)) with respect to a product
20 (hereafter in this section referred to as an ‘input
21 product’) that is used in the same country as the au-
22 thority in the manufacture or production of mer-
23 chandise which is the subject of a countervailing
24 duty proceeding;”, and

1 (2) in the flush sentence at the end thereof, by
2 inserting “countervailable” before “subsidy”.

3 **SEC. 269. DETERMINATION OF COUNTERAVAILABLE SUB-**
4 **SIDY RATE.**

5 (a) IN GENERAL.—Section 777A (19 U.S.C. 1677f–
6 1), as amended by section 229, is amended by adding at
7 the end the following new subsection:

8 “(e) DETERMINATION OF COUNTERAVAILABLE SUB-
9 SIDY RATE.—

10 “(1) GENERAL RULE.—In determining
11 countervailable subsidy rates under section 703(d),
12 705(c), or 751(a), the administering authority shall
13 determine an individual countervailable subsidy rate
14 for each known exporter or producer of the subject
15 merchandise.

16 “(2) EXCEPTION.—If the administering author-
17 ity determines that it is not practicable to determine
18 individual countervailable subsidy rates under para-
19 graph (1) because of the large number of exporters
20 or producers involved in the investigation or review,
21 the administering authority may—

22 “(A) determine individual countervailable
23 subsidy rates for a reasonable number of ex-
24 porters or producers by limiting its examination
25 to—

1 “(i) a sample of exporters or produc-
2 ers that the administering authority deter-
3 mines is statistically valid based on the in-
4 formation available to the administering
5 authority at the time of selection, or

6 “(ii) exporters and producers account-
7 ing for the largest volume of the subject
8 merchandise from the exporting country
9 that the administering authority deter-
10 mines can be reasonably examined; or

11 “(B) determine a single country-wide sub-
12 sidy rate to be applied to all exporters and pro-
13 ducers.

14 The individual countervailable subsidy rates deter-
15 mined under subparagraph (A) shall be used to de-
16 termine the all-others rate under section 705(c)(5).”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) The heading for section 777A, as amended
19 by section 229, is amended by inserting “**AND**
20 **COUNTERAVAILABLE SUBSIDY RATE**” after
21 “**MARGIN**”.

22 (2) The table of contents for title VII is amend-
23 ed by inserting “; determination of weighted average
24 dumping margin and countervailable subsidy rate”

1 after “averaging” in the item relating to section
2 777A.

3 **SEC. 270. CONFORMING AMENDMENTS.**

4 (a) COUNTERAVAILABLE SUBSIDY.—

5 (1) Except as provided in paragraph (2), each
6 of the following sections is amended by striking
7 “subsidy” each place it appears in the text and in
8 the heading and inserting “countervailable subsidy”:

9 (A) Section 702(e) (19 U.S.C. 1671a(e)).

10 (B) Section 703(b)(1) (19 U.S.C.
11 1671b(b)(1)).

12 (C) Section 703(b)(2) (19 U.S.C.
13 1671b(b)(2)).

14 (D) Section 703(c)(1)(B)(i)(I) (19 U.S.C.
15 1671b(c)(1)(B)(i)(I)).

16 (E) Section 704 (19 U.S.C. 1671c).

17 (F) Section 705(a)(1) (19 U.S.C.
18 1671d(a)(1)).

19 (G) Section 705(a)(2) (19 U.S.C.
20 1671d(a)(2)).

21 (H) Section 706(a)(1) (19 U.S.C.
22 1671e(a)(1)).

23 (I) Section 761 (19 U.S.C. 1676).

24 (J) Section 762 (19 U.S.C. 1676a).

1 (K) Section 771A(b) (19 U.S.C. 1677–
2 1(b)).

3 (L) Section 771A(c) (19 U.S.C. 1677–
4 1(c)).

5 (M) Section 780(d)(1)(A)(ii) (19 U.S.C.
6 1677i(d)(1)(A)(ii)).

7 (N) Section 516A(a)(2)(B)(iv) (19 U.S.C.
8 1516a(a)(2)(B)(iv)).

9 (2)(A) The heading for section 704(b) (19
10 U.S.C. 1671c(b)) is amended by striking “Subsidy”
11 and inserting “Countervailable Subsidy”.

12 (B) The heading for section 771(A)(c) (19
13 U.S.C. 1677–1(c)) is amended by striking “Subsidy”
14 and inserting “Countervailable Subsidy”.

15 (b) COUNTERAVAILABLE SUBSIDIES.—

16 (1) Except as provided in paragraph (2), each
17 of the following sections is amended by striking
18 “subsidies” each place it appears in the text and in
19 the heading and inserting “countervailable sub-
20 sidies”:

21 (A) Section 701(d) (19 U.S.C. 1671(d)).

22 (B) Section 703(c)(1)(B)(i)(III) (19
23 U.S.C. 1671b(c)(1)(B)(i)(III)).

24 (C) Section 761 (19 U.S.C. 1676).

25 (D) Section 771B (19 U.S.C. 1677–2).

1 (2) The heading for section 761(a) and section
2 771B (19 U.S.C. 1676(a) and 1677-2) are each
3 amended by striking “Subsidies” and inserting
4 “Countervailable Subsidies”.

5 (c) OTHER CONFORMING AMENDMENTS.—

6 (1) The heading for section 704(b) (19 U.S.C.
7 1671c(b)) is amended by striking “Subsidized Mer-
8 chandise” and inserting “Subject Merchandise”.

9 (2) Subparagraphs (C) and (D) of section
10 771(4) (19 U.S.C. 1677(4) (C) and (D)) are amend-
11 ed by striking “subsidized or” each place it appears
12 and inserting “or imports of merchandise benefiting
13 from a countervailable subsidy” after “imports”.

14 (3) Section 771A (19 U.S.C. 1677-1), as
15 amended, is amended in subsection (c), by striking
16 “subsidization” and inserting “the countervailable
17 subsidy”.

18 (4) The table of contents for title VII is amend-
19 ed—

20 (A) in the item relating to section 771B,
21 by inserting “countervailable” before “sub-
22 sidies”, and

23 (B) in the item relating to section 775, by
24 striking “Subsidy” and inserting
25 “Countervailable subsidy”.

1 (d) SUBSIDIES AGREEMENT.—Section 702(e) (19
2 U.S.C. 1671a(e)) is amended by striking “Agreement”
3 and inserting “Subsidies Agreement”.

4 (e) SUBSIDIES AGREEMENT AND AGREEMENT ON
5 AGRICULTURE.—Section 771(8) (19 U.S.C. 1677(8)) is
6 amended to read as follows:

7 “(8) SUBSIDIES AGREEMENT; AGREEMENT ON
8 AGRICULTURE.—

9 “(A) SUBSIDIES AGREEMENT.—The term
10 ‘Subsidies Agreement’ means the Agreement on
11 Subsidies and Countervailing Measures referred
12 to in section 101(d)(12) of the Uruguay Round
13 Agreements Act.

14 “(B) AGREEMENT ON AGRICULTURE.—The
15 term ‘Agreement on Agriculture’ means the
16 Agreement on Agriculture referred to in section
17 101(d)(2) of the Uruguay Round Agreements
18 Act.”.

19 **PART 3—SECTION 303 INJURY INVESTIGATIONS**
20 **SEC. 271. SPECIAL RULES FOR INJURY INVESTIGATIONS**
21 **FOR CERTAIN SECTION 303 COUNTERVAILING**
22 **DUTY ORDERS AND INVESTIGATIONS.**

23 (a) IN GENERAL.—Chapter 1 of subtitle C of title
24 VII, as amended, is amended by inserting after section
25 752 the following new section:

1 **“SEC. 753. SPECIAL RULES FOR INJURY INVESTIGATIONS**
2 **FOR CERTAIN SECTION 303 COUNTERVAILING**
3 **DUTY ORDERS AND INVESTIGATIONS.**

4 “(a) IN GENERAL.—

5 “(1) INVESTIGATION BY THE COMMISSION
6 UPON REQUEST.—In the case of a countervailing
7 duty order described in paragraph (2), which—

8 “(A) applies to merchandise that is the
9 product of a Subsidies Agreement country, and

10 “(B)(i) is in effect on the date on which
11 such country becomes a Subsidies Agreement
12 country, or

13 “(ii) is issued on a date that is after the
14 date described in clause (i) pursuant to a court
15 order in an action brought under section 516A,
16 the Commission, upon receipt of a request from an
17 interested party described in section 771(9) (C),
18 (D), (E), (F), or (G) for an injury investigation with
19 respect to such order, shall initiate an investigation
20 and shall determine whether an industry in the
21 United States is likely to be materially injured by
22 reason of imports of the subject merchandise if the
23 order is revoked.

24 “(2) DESCRIPTION OF COUNTERVAILING DUTY
25 ORDERS.—A countervailing duty order described in
26 this paragraph is an order issued under section 303

1 with respect to which the requirement of an affirma-
2 tive determination of material injury under section
3 303(a)(2) was not applicable at the time such order
4 was issued.

5 “(3) REQUIREMENTS OF REQUEST FOR INVESTIGATION.—A request for an investigation under
6 this subsection shall be submitted—
7

8 “(A) in the case of an order described in
9 paragraph (1)(B)(i), within 6 months after the
10 date on which the country described in para-
11 graph (1)(A) becomes a Subsidies Agreement
12 country, or

13 “(B) in the case of an order described in
14 paragraph (1)(B)(ii), within 6 months after the
15 date the order is issued.

16 “(4) SUSPENSION OF LIQUIDATION.—With re-
17 spect to entries of subject merchandise made on or
18 after—

19 “(A) in the case of an order described in
20 paragraph (1)(B)(i), the date on which the
21 country described in paragraph (1)(A) becomes
22 a Subsidies Agreement country, or

23 “(B) in the case of an order described in
24 paragraph (1)(B)(ii), the date on which the
25 order is issued,

1 liquidation shall be suspended at the cash deposit
2 rate in effect on the date described in subparagraph
3 (A) or (B) (whichever is applicable).

4 “(b) INVESTIGATION PROCEDURE AND SCHEDULE.—

5 “(1) COMMISSION PROCEDURE.—

6 “(A) IN GENERAL.—Except as otherwise
7 provided in this section, the provisions of this
8 title regarding evidence in and procedures for
9 investigations conducted under subtitle A shall
10 apply to investigations conducted by the Com-
11 mission under this section.

12 “(B) TIME FOR COMMISSION DETERMINA-
13 TION.—Except as otherwise provided in sub-
14 paragraph (C), the Commission shall issue its
15 determination under subsection (a)(1), to the
16 extent possible, not later than 1 year after the
17 date on which the investigation is initiated
18 under this section.

19 “(C) SPECIAL RULE TO PERMIT ADMINIS-
20 TRATIVE FLEXIBILITY.—In the case of requests
21 for investigations received under this section
22 within 1 year after the date on which the WTO
23 Agreement enters into force with respect to the
24 United States, the Commission may, after con-
25 sulting with the administering authority, initi-

1 ate its investigations in a manner that results
2 in determinations being made in all such inves-
3 tigations during the 4-year period beginning on
4 such date.

5 “(2) NET COUNTERAVAILABLE SUBSIDY; NATURE
6 OF SUBSIDY.—

7 “(A) NET COUNTERAVAILABLE SUBSIDY.—

8 The administering authority shall provide to the
9 Commission the net countervailable subsidy
10 that is likely to prevail if the order which is the
11 subject of the investigation is revoked. The ad-
12 ministering authority normally shall choose a
13 net countervailable subsidy that was determined
14 under section 705 or subsection (a) or (b)(1) of
15 section 751. If the Commission considers the
16 magnitude of the net countervailable subsidy in
17 making its determination under this section, the
18 Commission shall use the net countervailable
19 subsidy provided by the administering author-
20 ity.

21 “(B) NATURE OF SUBSIDY.—The admin-
22 istering authority shall inform the Commission
23 of, and the Commission, in making its deter-
24 mination under this section, shall consider, the
25 nature of the countervailable subsidy and

1 whether the countervailable subsidy is a subsidy
2 described in Article 3 or Article 6.1 of the Sub-
3 sidies Agreement.

4 “(3) EFFECT OF COMMISSION DETERMINA-
5 TION.—

6 “(A) AFFIRMATIVE DETERMINATION.—
7 Upon being notified by the Commission that it
8 has made an affirmative determination under
9 subsection (a)(1)—

10 “(i) the administering authority shall
11 order the termination of the suspension of
12 liquidation required pursuant to subsection
13 (a)(4), and

14 “(ii) the countervailing duty order
15 shall remain in effect until revoked, in
16 whole or in part, under section 751(d).

17 For purposes of section 751(c), a countervailing
18 duty order described in this section shall be
19 treated as issued on the date of publication of
20 the Commission’s determination under this sub-
21 section.

22 “(B) NEGATIVE DETERMINATION.—

23 “(i) IN GENERAL.—Upon being noti-
24 fied by the Commission that it has made a
25 negative determination under subsection

1 (a)(1), the administering authority shall
2 revoke the countervailing duty order, and
3 shall refund, with interest, any estimated
4 countervailing duties collected during the
5 period liquidation was suspended pursuant
6 to subsection (a)(4).

7 “(ii) LIMITATION ON NEGATIVE DE-
8 TERMINATION.—A determination by the
9 Commission that revocation of the order is
10 not likely to result in material injury to an
11 industry by reason of imports of the sub-
12 ject merchandise shall not be based, in
13 whole or in part, on any export taxes, du-
14 ties, or other charges levied on the export
15 of the subject merchandise to the United
16 States that were specifically intended to
17 offset the countervailable subsidy received.

18 “(4) COUNTERVAILING DUTY ORDERS WITH RE-
19 SPECT TO WHICH NO REQUEST FOR INJURY INVE-
20 STIGATION IS MADE.—If, with respect to a counter-
21 vailing duty order described in subsection (a), a re-
22 quest for an investigation is not made within the
23 time required by subsection (a)(3), the Commission
24 shall notify the administering authority that a nega-
25 tive determination has been made under subsection

1 (a) and the provisions of paragraph (3)(B) shall
2 apply with respect to the order.

3 “(c) PENDING AND SUSPENDED COUNTERVAILING
4 DUTY INVESTIGATIONS.—If, on the date on which a coun-
5 try becomes a Subsidies Agreement country, there is a
6 countervailing duty investigation in progress or suspended
7 under section 303 that applies to merchandise which is
8 a product of that country and with respect to which the
9 requirement of an affirmative determination of material
10 injury under section 303(a)(2) was not applicable at the
11 time the investigation was initiated, the Commission
12 shall—

13 “(1) in the case of an investigation in progress,
14 make a final determination under section 705(b)
15 within 75 days after the date of an affirmative final
16 determination, if any, by the administering author-
17 ity,

18 “(2) in the case of a suspended investigation to
19 which section 704(i)(1)(B) applies, make a final de-
20 termination under section 705(b) within 120 days
21 after receiving notice from the administering author-
22 ity of the resumption of the investigation pursuant
23 to section 704(i), or within 45 days after the date
24 of an affirmative final determination, if any, by the
25 administering authority, whichever is later, or

1 “(3) in the case of a suspended investigation to
2 which section 704(i)(1)(C) applies, treat the counter-
3 vailing duty order issued pursuant to such section as
4 if it were—

5 “(A) an order issued under subsection
6 (a)(1)(B)(ii) for purposes of subsection (a)(3);
7 and

8 “(B) an order issued under subsection
9 (a)(1)(B)(i) for purposes of subsection (a)(4).

10 “(d) PUBLICATION IN FEDERAL REGISTER.—The
11 administering authority or the Commission, as the case
12 may be, shall publish in the Federal Register a notice of
13 the initiation of any investigation, and a notice of any de-
14 termination or revocation, made pursuant to this section.

15 “(e) REQUEST FOR SIMULTANEOUS EXPEDITED RE-
16 VIEW UNDER SECTION 751(c).—

17 “(1) GENERAL RULE.—

18 “(A) REQUESTS FOR REVIEWS.—Notwith-
19 standing section 751(c)(6)(A) and except as
20 provided in subparagraph (B), an interested
21 party may request a review of an order under
22 section 751(c) at the same time the party re-
23 quests an investigation under subsection (a), if
24 the order involves the same or comparable sub-
25 ject merchandise. Upon receipt of such request,

1 the administering authority, after consulting
2 with the Commission, shall initiate a review of
3 the order under section 751(c). The Commis-
4 sion shall combine such review with the inves-
5 tigation under this section.

6 “(B) EXCEPTION.—If the administering
7 authority determines that the interested party
8 who requested an investigation under this sec-
9 tion is a related party or an importer within the
10 meaning of section 771(4)(B), the administer-
11 ing authority may decline a request by such
12 party to initiate a review of an order under sec-
13 tion 751(c) which involves the same or com-
14 parable subject merchandise.

15 “(2) CUMULATION.—If a review under section
16 751(c) is initiated under paragraph (1), such review
17 shall be treated as having been initiated on the same
18 day as the investigation under this section, and the
19 Commission may, in accordance with section
20 771(7)(G), cumulatively assess the volume and effect
21 of imports of the subject merchandise from all coun-
22 tries with respect to which such investigations are
23 treated as initiated on the same day.

24 “(3) TIME AND PROCEDURE FOR COMMISSION
25 DETERMINATION.—The Commission shall render its

1 determination in the investigation conducted under
2 this section at the same time as the Commission's
3 determination is made in the review under section
4 751(c) that is initiated pursuant to this subsection.
5 The Commission shall in all other respects apply the
6 procedures and standards set forth in section 751(c)
7 to such section 751(c) reviews.”.

8 (b) REVIEW OF DETERMINATIONS.—Section
9 516A(a)(2) (19 U.S.C. 1516a(a)(2)) is amended—

10 (1) in subparagraph (A)(i)(I), by striking “or
11 (v)” and inserting “(v), or (viii)”, and

12 (2) in subparagraph (B), by adding at the end
13 the following:

14 “(viii) A determination by the Com-
15 mission under section 753(a)(1).”.

16 (c) CONFORMING AMENDMENT.—The table of con-
17 tents for title VII, as amended, is amended by inserting
18 after the item relating to section 752 the following new
19 item:

“Sec. 753. Special rules for injury investigations for certain section 303 coun-
tervailing duty orders and investigations.”.

20 **PART 4—ENFORCEMENT OF UNITED STATES**

21 **RIGHTS UNDER THE SUBSIDIES AGREEMENT**

22 **SEC. 281. SUBSIDIES ENFORCEMENT.**

23 (a) ASSISTANCE REGARDING MULTILATERAL SUB-
24 SIDY REMEDIES.—The administering authority shall pro-

1 vide information to the public upon request, and, to the
2 extent feasible, assistance and advice to interested parties
3 concerning—

4 (1) remedies and benefits available under rel-
5 evant provisions of the Subsidies Agreement, and

6 (2) the procedures relating to such remedies
7 and benefits.

8 (b) PROHIBITED SUBSIDIES.—

9 (1) NOTIFICATION OF TRADE REPRESENTA-
10 TIVE.—If the administering authority determines
11 pursuant to title VII of the Tariff Act of 1930 that
12 a class or kind of merchandise is benefiting from a
13 subsidy which is prohibited under Article 3 of the
14 Subsidies Agreement, the administering authority
15 shall notify the Trade Representative and shall pro-
16 vide the Trade Representative with the information
17 upon which the administering authority based its de-
18 termination.

19 (2) REQUEST BY INTERESTED PARTY REGARD-
20 ING PROHIBITED SUBSIDY.—An interested party
21 may request that the administering authority deter-
22 mine if there is reason to believe that merchandise
23 produced in a WTO member country is benefiting
24 from a subsidy which is prohibited under Article 3
25 of the Subsidies Agreement. The request shall con-

1 tain such information as the administering authority
2 may require to support the allegations contained in
3 the request. If the administering authority, after
4 analyzing the request and other information reason-
5 ably available to the administering authority, deter-
6 mines that there is reason to believe that such mer-
7 chandise is benefiting from a subsidy which is pro-
8 hibited under Article 3 of the Subsidies Agreement,
9 the administering authority shall so notify the Trade
10 Representative, and shall include supporting infor-
11 mation with the notification.

12 (c) SUBSIDIES ACTIONABLE UNDER THE AGREE-
13 MENT.—

14 (1) IN GENERAL.—If the administering author-
15 ity determines pursuant to title VII of the Tariff Act
16 of 1930 that a class or kind of merchandise is bene-
17 fitting from a subsidy described in Article 6.1 of the
18 Subsidies Agreement, the administering authority
19 shall notify the Trade Representative, and shall pro-
20 vide the Trade Representative with the information
21 upon which the administering authority based its de-
22 termination.

23 (2) REQUEST BY INTERESTED PARTY REGARD-
24 ING ADVERSE EFFECTS.—An interested party may
25 request the administering authority to determine if

1 there is reason to believe that a subsidy which is ac-
2 tionable under the Subsidies Agreement is causing
3 adverse effects. The request shall contain such infor-
4 mation as the administering authority may require
5 to support the allegations contained in the request.
6 At the request of the administering authority, the
7 Commission shall assist the administering authority
8 in analyzing the information pertaining to the exist-
9 ence of such adverse effects. If the administering au-
10 thority, after analyzing the request and other infor-
11 mation reasonably available to the administering au-
12 thority, determines that there is reason to believe
13 that a subsidy which is actionable under the Sub-
14 sidies Agreement is causing adverse effects, the ad-
15 ministering authority shall so notify the Trade Rep-
16 resentative, and shall include supporting information
17 with the notification.

18 (d) INITIATION OF SECTION 301 INVESTIGATION.—
19 On the basis of the notification and information provided
20 by the administering authority pursuant to subsection (b)
21 or (c), such other information as the Trade Representative
22 may have or obtain, and where applicable, after consulta-
23 tion with an interested party referred to in subsection
24 (b)(2) or (c)(2), the Trade Representative shall, unless
25 such interested party objects, determine as expeditiously

1 as possible, in accordance with the procedures in section
2 302(b)(1) of the Trade Act of 1974 (19 U.S.C.
3 2412(b)(1)), whether to initiate an investigation pursuant
4 to title III of that Act (19 U.S.C. 2411 et seq.). At the
5 request of the Trade Representative, the administering au-
6 thority and the Commission shall assist the Trade Rep-
7 resentative in an investigation initiated pursuant to this
8 subsection.

9 (e) NONACTIONABLE SUBSIDIES.—

10 (1) COMPLIANCE WITH ARTICLE 8 OF THE SUB-
11 SIDIES AGREEMENT.—

12 (A) MONITORING.—In order to monitor
13 whether a subsidy meets the conditions and cri-
14 teria described in Article 8.2 of the Subsidies
15 Agreement and is nonactionable, the Trade
16 Representative shall provide the administering
17 authority on a timely basis with any informa-
18 tion submitted or report made pursuant to Arti-
19 cle 8.3 or 8.4 of the Subsidies Agreement re-
20 garding a notified subsidy program. The admin-
21 istering authority shall review such information
22 and reports, and where appropriate, shall rec-
23 ommend to the Trade Representative that the
24 Trade Representative seek pursuant to Article
25 8.3 or 8.4 of the Subsidies Agreement addi-

1 tional information regarding the notified sub-
2 sidy program or a subsidy granted pursuant to
3 the notified subsidy program. If the administer-
4 ing authority has reason to believe that a viola-
5 tion of Article 8 of the Subsidies Agreement ex-
6 ists, the administering authority shall so notify
7 the Trade Representative, and shall include
8 supporting information with the notification.

9 (B) REQUEST BY INTERESTED PARTY RE-
10 GARDING VIOLATION OF ARTICLE 8.—An inter-
11 ested party may request the administering au-
12 thority to determine if there is reason to believe
13 that a violation of Article 8 of the Subsidies
14 Agreement exists. The request shall contain
15 such information as the administering authority
16 may require to support the allegations con-
17 tained in the request. If the administering au-
18 thority, after analyzing the request and other
19 information reasonably available to the admin-
20 istering authority, determines that additional
21 information is needed, the administering au-
22 thority shall recommend to the Trade Rep-
23 resentative that the Trade Representative seek,
24 pursuant to Article 8.3 or 8.4 of the Subsidies
25 Agreement, additional information regarding

1 the particular notified subsidy program or a
2 subsidy granted pursuant to the notified sub-
3 subsidy program. If the administering authority de-
4 termines that there is reason to believe that a
5 violation of Article 8 of the Subsidies Agree-
6 ment exists, the administering authority shall
7 so notify the Trade Representative, and shall
8 include supporting information with the notifi-
9 cation.

10 (C) ACTION BY TRADE REPRESENTA-
11 TIVE.—

12 (i) If the Trade Representative, on the
13 basis of the notification and information
14 provided by the administering authority
15 pursuant to subparagraph (A) or (B), and
16 such other information as the Trade Rep-
17 resentative may have or obtain, and after
18 consulting with the interested party re-
19 ferred to in subparagraph (B) and appro-
20 priate domestic industries, determines that
21 there is reason to believe that a violation
22 of Article 8 of the Subsidies Agreement ex-
23 ists, the Trade Representative shall invoke
24 the procedures of Article 8.4 or 8.5 of the
25 Subsidies Agreement.

1 (ii) For purposes of clause (i), the
2 Trade Representative shall determine that
3 there is reason to believe that a violation
4 of Article 8 exists in any case in which the
5 Trade Representative determines that a
6 notified subsidy program or a subsidy
7 granted pursuant to a notified subsidy pro-
8 gram does not satisfy the conditions and
9 criteria required for a nonactionable sub-
10 sidy program under this Act, the Subsidies
11 Agreement, and the statement of adminis-
12 trative action approved under section
13 101(a).

14 (D) NOTIFICATION OF ADMINISTERING AU-
15 THORITY.—The Trade Representative shall no-
16 tify the administering authority whenever a vio-
17 lation of Article 8 of the Subsidies Agreement
18 has been found to exist pursuant to Article 8.4
19 or 8.5 of that Agreement.

20 (2) SERIOUS ADVERSE EFFECTS.—

21 (A) REQUEST BY INTERESTED PARTY.—
22 An interested party may request the admin-
23 istering authority to determine if there is rea-
24 son to believe that serious adverse effects re-
25 sulting from a program referred to in Article

1 8.2 of the Subsidies Agreement exist. The re-
2 quest shall contain such information as the ad-
3 ministering authority may require to support
4 the allegations contained in the request.

5 (B) ACTION BY ADMINISTERING AUTHOR-
6 ITY.—Within 90 days after receipt of the re-
7 quest described in subparagraph (A), the ad-
8 ministering authority, after analyzing the re-
9 quest and other information reasonably avail-
10 able to the administering authority, shall deter-
11 mine if there is reason to believe that serious
12 adverse effects resulting from a program re-
13 ferred to in Article 8.2 of the Subsidies Agree-
14 ment exist. If the determination of the admin-
15 istering authority is affirmative, it shall so no-
16 tify the Trade Representative and shall include
17 supporting information with the notification.
18 The Commission shall assist the administering
19 authority in analyzing the information pertain-
20 ing to the existence of such serious adverse ef-
21 fects if the administering authority requests the
22 Commission's assistance. If the subsidy pro-
23 gram that is alleged to result in serious adverse
24 effects has been the subject of a countervailing
25 duty investigation or review under subtitle A or

1 C of title VII of the Tariff Act of 1930, the ad-
2 ministering authority shall take into account
3 the determinations made by the administering
4 authority and the Commission in such inves-
5 tigation or review and the administering au-
6 thority shall complete its analysis as expedi-
7 tiously as possible.

8 (C) ACTION BY TRADE REPRESENTA-
9 TIVE.—The Trade Representative, on the basis
10 of the notification and information provided by
11 the administering authority pursuant to sub-
12 paragraph (B), and such other information as
13 the Trade Representative may have or obtain,
14 shall determine as expeditiously as possible, but
15 not later than 30 days after receipt of the noti-
16 fication provided by the administering author-
17 ity, if there is reason to believe that serious ad-
18 verse effects exist resulting from the subsidy
19 program which is the subject of the administer-
20 ing authority's notification. The Trade Rep-
21 resentative shall make an affirmative deter-
22 mination regarding the existence of such serious
23 adverse effects unless the Trade Representative
24 finds that the notification of the administering
25 authority is not supported by the facts.

1 (D) CONSULTATIONS.—If the Trade Rep-
2 resentative determines that there is reason to
3 believe that serious adverse effects resulting
4 from the subsidy program exist, the Trade Rep-
5 resentative, unless the interested party referred
6 to in subparagraph (A) objects, shall invoke the
7 procedures of Article 9 of the Subsidies Agree-
8 ment, and shall request consultations pursuant
9 to Article 9.2 of the Subsidies Agreement with
10 respect to such serious adverse effects. If such
11 consultations have not resulted in a mutually
12 acceptable solution within 60 days after the re-
13 quest is made for such consultations, the Trade
14 Representative shall refer the matter to the
15 Subsidies Committee pursuant to Article 9.3 of
16 the Subsidies Agreement.

17 (E) DETERMINATION BY SUBSIDIES COM-
18 MITTEE.—If the Trade Representative deter-
19 mines that—

20 (i) the Subsidies Committee has been
21 prevented from making an affirmative de-
22 termination regarding the existence of seri-
23 ous adverse effects under Article 9 of the
24 Subsidies Agreement by reason of the re-
25 fusals of the WTO member country with re-

1 spect to which the consultations have been
2 invoked to join in an affirmative consen-
3 sus—

4 (I) that such serious adverse ef-
5 fects exist, or

6 (II) regarding a recommendation
7 to such WTO member country to
8 modify the subsidy program in such a
9 way as to remove the serious adverse
10 effects, or

11 (ii) the Subsidies Committee has not
12 presented its conclusions regarding the ex-
13 istence of such serious adverse effects
14 within 120 days after the date the matter
15 was referred to it, as required by Article
16 9.4 of the Subsidies Agreement,

17 the Trade Representative shall, within 30 days
18 after such determination, make a determination
19 under section 304(a)(1) of the Trade Act of
20 1974 (19 U.S.C. 2414(a)(1)) regarding what
21 action to take under section 301(a)(1)(A) of
22 that Act.

23 (F) NONCOMPLIANCE WITH COMMITTEE
24 RECOMMENDATION.—In the event that the Sub-
25 sidies Committee makes a recommendation

1 under Article 9.4 of the Subsidies Agreement
2 and the WTO member country with respect to
3 which such recommendation is made does not
4 comply with such recommendation within 6
5 months after the date of the recommendation,
6 the Trade Representative shall make a deter-
7 mination under section 304(a)(1) of the Trade
8 Act of 1974 (19 U.S.C. 2414(a)(1)) regarding
9 what action to take under section 301(a) of
10 that Act.

11 (f) NOTIFICATION, CONSULTATION, AND PUBLICA-
12 TION.—

13 (1) NOTIFICATION OF CONGRESS.—The Trade
14 Representative shall submit promptly to the Com-
15 mittee on Ways and Means of the House of Rep-
16 resentatives, the Committee on Finance of the Sen-
17 ate, and other appropriate committees of the Con-
18 gress any information submitted or report made pur-
19 suant to Article 8.3 or 8.4 of the Subsidies Agree-
20 ment regarding a notified subsidy program.

21 (2) PUBLICATION IN THE FEDERAL REG-
22 ISTER.—The administering authority shall publish
23 regularly in the Federal Register a summary notice
24 of any information submitted or report made pursu-

1 ant to Article 8.3 or 8.4 of the Subsidies Agreement
2 regarding notified subsidy programs.

3 (3) CONSULTATIONS WITH CONGRESS AND PRI-
4 VATE SECTOR.—The Trade Representative and the
5 administering authority promptly shall consult with
6 the committees referred to in paragraph (1), and
7 with interested representatives of the private sector,
8 regarding all information submitted or reports made
9 pursuant to Article 8.3 or 8.4 of the Subsidies
10 Agreement regarding a notified subsidy program.

11 (4) ANNUAL REPORT.—Not later than Feb-
12 ruary 1 of each year beginning in 1996, the Trade
13 Representative and the administering authority shall
14 issue a joint report to the Congress detailing—

15 (A) the subsidies practices of major trad-
16 ing partners of the United States, including
17 subsidies that are prohibited, are causing seri-
18 ous prejudice, or are nonactionable, under the
19 Subsidies Agreement, and

20 (B) the monitoring and enforcement activi-
21 ties of the Trade Representative and the admin-
22 istering authority during the preceding calendar
23 year which relate to subsidies practices.

24 (g) COOPERATION OF OTHER AGENCIES.—All agen-
25 cies, departments, and independent agencies of the Fed-

1 eral Government shall cooperate fully with one another in
2 carrying out the provisions of this section, and, upon the
3 request of the administering authority, shall furnish to the
4 administering authority all records, papers, and informa-
5 tion in their possession which relate to the requirements
6 of this section.

7 (h) DEFINITIONS.—For purposes of this section—

8 (1) ADVERSE EFFECTS.—The term “adverse ef-
9 fects” has the meaning given that term in Articles
10 5(a) and 5(c) of the Subsidies Agreement.

11 (2) ADMINISTERING AUTHORITY.—The term
12 “administering authority” has the meaning given
13 that term in section 771(1) of the Tariff Act of
14 1930 (19 U.S.C. 1677(1)).

15 (3) COMMISSION.—The term “Commission”
16 means the United States International Trade Com-
17 mission.

18 (4) INTERESTED PARTY.—The term “interested
19 party” means a party described in subparagraph
20 (C), (D), (E), (F), or (G) of section 771(9) of the
21 Tariff Act of 1930 (19 U.S.C. 1677(9) (A), (C),
22 (D), (E), (F), or (G)).

23 (5) NONACTIONABLE SUBSIDY.—The term
24 “nonactionable subsidy” means a subsidy described
25 in Article 8.1(b) of the Subsidies Agreement.

1 (6) NOTIFIED SUBSIDY PROGRAM.—The term
2 “notified subsidy program” means a subsidy pro-
3 gram which has been notified pursuant to Article 8.3
4 of the Subsidies Agreement.

5 (7) SERIOUS ADVERSE EFFECTS.—The term
6 “serious adverse effects” has the meaning given that
7 term in Article 9.1 of the Subsidies Agreement.

8 (8) SUBSIDIES AGREEMENT.—The term “Sub-
9 sidies Agreement” means the Agreement on Sub-
10 sidies and Countervailing Measures described in sec-
11 tion 771(8) of the Tariff Act of 1930 (19 U.S.C.
12 1677(8)).

13 (9) SUBSIDIES COMMITTEE.—The term “Sub-
14 sidies Committee” means the committee established
15 pursuant to Article 24 of the Subsidies Agreement.

16 (10) SUBSIDY.—The term “subsidy” has the
17 meaning given that term in Article 1 of the Sub-
18 sidies Agreement.

19 (11) TRADE REPRESENTATIVE.—The term
20 “Trade Representative” means the United States
21 Trade Representative.

22 (12) VIOLATION OF ARTICLE 8.—The term
23 “violation of Article 8” means the failure of a noti-
24 fied subsidy program or an individual subsidy grant-
25 ed pursuant to a notified subsidy program to meet

1 the applicable conditions and criteria described in
2 Article 8.2 of the Subsidies Agreement.

3 (i) TREATMENT OF PROPRIETARY INFORMATION.—
4 Notwithstanding any other provision of law, the admin-
5 istering authority may provide the Trade Representative
6 with a copy of proprietary information submitted to, or
7 obtained by, the administering authority that the Trade
8 Representative considers relevant in carrying out its re-
9 sponsibilities under this part. The Trade Representative
10 shall protect from public disclosure proprietary informa-
11 tion obtained from the administering authority under this
12 part.

13 **SEC. 282. REVIEW OF SUBSIDIES AGREEMENT.**

14 (a) GENERAL OBJECTIVES.—The general objectives
15 of the United States under this part are—

16 (1) to ensure that parts II and III of the
17 Agreement on Subsidies and Countervailing Meas-
18 ures referred to in section 101(d)(12) (hereafter in
19 this section referred to as the “Subsidies Agree-
20 ment”) are effective in disciplining the use of sub-
21 sidies and in remedying the adverse effects of sub-
22 sidies, and

23 (2) to ensure that part IV of the Subsidies
24 Agreement does not undermine the benefits derived
25 from any other part of that Agreement.

1 (b) SPECIFIC OBJECTIVE.—The specific objective of
2 the United States under this part shall be to create a
3 mechanism which will provide for an ongoing review of the
4 operation of part IV of the Subsidies Agreement.

5 (c) SUNSET OF NONCOUNTERAVAILABLE SUBSIDIES
6 PROVISIONS.—

7 (1) IN GENERAL.—Subparagraphs (B), (C),
8 (D), and (E) of section 771(5B) of the Tariff Act
9 of 1930 shall cease to apply as provided in subpara-
10 graph (G)(i) of such section, unless, before the date
11 referred to in such subparagraph (G)(i)—

12 (A) the Subsidies Committee determines to
13 extend Articles 6.1, 8, and 9 of the Subsidies
14 Agreement as in effect on the date on which the
15 Subsidies Agreement enters into force or in a
16 modified form, in accordance with Article 31 of
17 such Agreement,

18 (B) the President consults with the Con-
19 gress in accordance with paragraph (2), and

20 (C) an implementing bill is submitted and
21 enacted into law in accordance with paragraphs
22 (3) and (4).

23 (2) CONSULTATION WITH CONGRESS BEFORE
24 SUBSIDIES COMMITTEE AGREES TO EXTEND.—Be-
25 fore a determination is made by the Subsidies Com-

1 mittee to extend Articles 6.1, 8, and 9 of the Sub-
2 sidies Agreement, the President shall consult with
3 the Committee on Ways and Means of the House of
4 Representatives and the Committee on Finance of
5 the Senate regarding such extension.

6 (3) IMPLEMENTATION OF EXTENSION.—

7 (A) NOTIFICATION AND SUBMISSION.—Any
8 extension of subparagraphs (B), (C), (D), and
9 (E) of section 771(5B) of the Tariff Act of
10 1930 shall take effect if (and only if)—

11 (i) after the Subsidies Committee de-
12 termines to extend Articles 6.1, 8, and 9 of
13 the Subsidies Agreement, the President
14 submits to the committees referred to in
15 paragraph (2) a copy of the document de-
16 scribing the terms of such extension, to-
17 gether with—

18 (I) a draft of an implementing
19 bill,

20 (II) a statement of any adminis-
21 trative action proposed to implement
22 the extension, and

23 (III) the supporting information
24 described in subparagraph (C); and

1 (ii) the implementing bill is enacted
2 into law.

3 (B) IMPLEMENTING BILL.—The imple-
4 menting bill referred to in subparagraph (A)
5 shall contain only those provisions that are nec-
6 essary or appropriate to implement an extension
7 of the provisions of section 771(5B) (B), (C),
8 (D), and (E) of the Tariff Act of 1930 as in
9 effect on the day before the date of the enact-
10 ment of the implementing bill or as modified to
11 reflect the determination of the Subsidies Com-
12 mittee to extend Articles 6.1, 8, and 9 of the
13 Subsidies Agreement.

14 (C) SUPPORTING INFORMATION.—The sup-
15 porting information required under subpara-
16 graph (A)(i)(III) consists of—

17 (i) an explanation as to how the im-
18 plementing bill and proposed administra-
19 tive action will change or affect existing
20 law; and

21 (ii) a statement regarding—

22 (I) how the extension serves the
23 interests of United States commerce,
24 and

1 (II) why the implementing bill
2 and proposed administrative action is
3 required or appropriate to carry out
4 the extension.

5 (4) APPLICATION OF CONGRESSIONAL “FAST
6 TRACK” PROCEDURES TO IMPLEMENTING BILL.—
7 Section 151 of the Trade Act of 1974 (19 U.S.C.
8 2191) is amended—

9 (A) in subsection (b)(1)—

10 (i) by inserting “, or with respect to
11 an extension described in section 282(c)(3)
12 of the Uruguay Round Agreements Act,”
13 after “trade agreements”,

14 (ii) by striking “or section 1103(a)(1)
15 of the Omnibus Trade and Competitiveness
16 Act of 1988” and inserting “, section
17 1103(a)(1) of the Omnibus Trade and
18 Competitiveness Act of 1988, or section
19 282 of the Uruguay Round Agreements
20 Act”, and

21 (iii) by inserting “or such extension”
22 in subparagraphs (A) and (C) after
23 “agreements” each place it appears, and
24 (B) in subsection (c)(1)—

1 (i) by inserting “or section 282 of the
2 Uruguay Round Agreements Act” after
3 “section 102”, and

4 (ii) by inserting “or extension” after
5 “agreement” each place it appears.

6 (5) REPORT BY THE TRADE REPRESENTA-
7 TIVE.—Not later than the date referred to in section
8 771 (5B) (G)(i) of the Tariff Act of 1930, the Trade
9 Representative shall submit to the Congress a report
10 setting forth the provisions of law which were en-
11 acted to implement Articles 6.1, 8, and 9 of the Sub-
12 sidies Agreement and should be repealed or modified
13 if such provisions are not extended.

14 (d) REVIEW OF THE OPERATION OF THE SUBSIDIES
15 AGREEMENT.—The Secretary of Commerce, in consulta-
16 tion with other appropriate departments and agencies of
17 the Federal Government, shall undertake an ongoing re-
18 view of the operation of the Subsidies Agreement. The re-
19 view shall address—

20 (1) the effectiveness of part II of the Subsidies
21 Agreement in disciplining the use of subsidies which
22 are prohibited under Article 3 of the Agreement,

23 (2) the effectiveness of part III and, in particu-
24 lar, Article 6.1 of the Subsidies Agreement, in rem-

1 edying the adverse effects of subsidies which are ac-
2 tionable under the Agreement, and

3 (3) the extent to which the provisions of part
4 IV of the Subsidies Agreement may have under-
5 mined the benefits derived from other parts of the
6 Agreement, and, in particular—

7 (A) the extent to which WTO member
8 countries have cooperated in reviewing and im-
9 proving the operation of part IV of the Sub-
10 sidies Agreement,

11 (B) the extent to which the provisions of
12 Articles 8.4 and 8.5 of the Subsidies Agreement
13 have been effective in identifying and remedying
14 violations of the conditions and criteria de-
15 scribed in Article 8.2 of the Agreement, and

16 (C) the extent to which the provisions of
17 Article 9 of the Subsidies Agreement have been
18 effective in remedying the serious adverse ef-
19 fects of subsidy programs described in Article
20 8.2 of the Agreement.

21 Not later than 4 years and 6 months after the date
22 of the enactment of this Act, the Secretary of Com-
23 merce shall submit to the Congress a report on the
24 review required under this subsection.

1 **SEC. 283. AMENDMENTS TO TITLE VII OF THE TARIFF ACT**
2 **OF 1930.**

3 (a) PRELIMINARY DETERMINATION BY ADMINISTER-
4 ING AUTHORITY.—Section 703(b) of the Tariff Act of
5 1930 (19 U.S.C. 1671b(b)), as amended, is amended by
6 adding at the end the following new paragraph:

7 “(5) NOTIFICATION OF ARTICLE 8 VIOLA-
8 TION.—If the only subsidy under investigation is a
9 subsidy with respect to which the administering au-
10 thority received notice from the Trade Representa-
11 tive of a violation of Article 8 of the Subsidies
12 Agreement, paragraph (1) shall be applied by sub-
13 stituting ‘60 days’ for ‘65 days’.”

14 (b) SUBSIDY PRACTICE DISCOVERED DURING A PRO-
15 CEEDING.—Section 775 of the Tariff Act of 1930 (19
16 U.S.C. 1677d) is amended to read as follows:

17 **“SEC. 775. COUNTERAVAILABLE SUBSIDY PRACTICES DIS-**
18 **COVERED DURING A PROCEEDING.**

19 “If, in the course of a proceeding under this title,
20 the administering authority discovers a practice which ap-
21 pears to be a countervailable subsidy, but was not included
22 in the matters alleged in a countervailing duty petition,
23 or if the administering authority receives notice from the
24 Trade Representative that a subsidy or subsidy program
25 is in violation of Article 8 of the Subsidies Agreement,
26 then the administering authority—

1 “(1) shall include the practice, subsidy, or sub-
2 sidy program in the proceeding if the practice, sub-
3 sidy, or subsidy program appears to be a
4 countervailable subsidy with respect to the merchan-
5 dise which is the subject of the proceeding, or

6 “(2) shall transfer the information (other than
7 confidential information) concerning the practice,
8 subsidy, or subsidy program to the library main-
9 tained under section 777(a)(1), if the practice, sub-
10 sidy, or subsidy program appears to be a
11 countervailable subsidy with respect to any other
12 merchandise.”.

13 (c) ADMINISTRATIVE REVIEWS.—Section 751 of the
14 Tariff Act of 1930 (19 U.S.C. 1675), as amended, is
15 amended by redesignating subsection (g) as subsection (h)
16 and by inserting after subsection (f) the following new
17 subsection:

18 “(g) REVIEWS TO IMPLEMENT RESULTS OF SUB-
19 SIDIES ENFORCEMENT PROCEEDING.—

20 “(1) VIOLATIONS OF ARTICLE 8 OF THE SUB-
21 SIDIES AGREEMENT.—If—

22 “(A) the administering authority receives
23 notice from the Trade Representative of a viola-
24 tion of Article 8 of the Subsidies Agreement,

1 “(B) the administering authority has rea-
2 son to believe that merchandise subject to an
3 existing countervailing duty order or suspended
4 investigation is benefiting from the subsidy or
5 subsidy program found to have been in violation
6 of Article 8 of the Subsidies Agreement, and

7 “(C) no review pursuant to subsection
8 (a)(1) is in progress,

9 the administering authority shall conduct a review of
10 the order or suspended investigation to determine
11 whether the subject merchandise benefits from the
12 subsidy or subsidy program found to have been in
13 violation of Article 8 of the Subsidies Agreement. If
14 the administering authority determines that the sub-
15 ject merchandise is benefiting from the subsidy or
16 subsidy program, it shall make appropriate adjust-
17 ments in the estimated duty to be deposited or ap-
18 propriate revisions to the terms of the suspension
19 agreement.

20 “(2) WITHDRAWAL OF SUBSIDY OR IMPOSITION
21 OF COUNTERMEASURES.—If the Trade Representa-
22 tive notifies the administering authority that, pursu-
23 ant to Article 4 or Article 7 of the Subsidies Agree-
24 ment—

1 “(A)(i) the United States has imposed
2 countermeasures, and

3 “(ii) such countermeasures are based on
4 the effects in the United States of imports of
5 merchandise that is the subject of a countervail-
6 ing duty order, or

7 “(B) a WTO member country has with-
8 drawn a countervailable subsidy provided with
9 respect to merchandise subject to a countervail-
10 ing duty order,

11 the administering authority shall conduct a review to
12 determine if the amount of the estimated duty to be
13 deposited should be adjusted or the order should be
14 revoked.

15 “(3) EXPEDITED REVIEW.—The administering
16 authority shall conduct reviews under this subsection
17 on an expedited basis, and shall publish the results
18 of such reviews in the Federal Register.”.

19 **Subtitle C—Effective Date**

20 **SEC. 291. EFFECTIVE DATE.**

21 (a) IN GENERAL.—Except as provided in section 261,
22 the amendments made by this title shall take effect on
23 the date described in subsection (b) and apply with respect
24 to—

25 (1) investigations initiated—

1 (A) on the basis of petitions filed under
2 section 702(b), 732(b), or 783(b) of the Tariff
3 Act of 1930 after the date described in sub-
4 section (b), or

5 (B) by the administering authority under
6 section 702(a) or 732(a) of such Act after such
7 date,

8 (2) reviews initiated under section 751 of such
9 Act—

10 (A) by the administering authority or the
11 Commission on their own initiative after such
12 date, or

13 (B) pursuant to a request filed after such
14 date,

15 (3) investigations initiated under section 753 of
16 such Act after such date,

17 (4) petitions filed under section 780 of such Act
18 after such date, and

19 (5) inquiries initiated under section 781 of such
20 Act—

21 (A) by the administering authority on its
22 own initiative after such date, or

23 (B) pursuant to a request filed after such
24 date.

1 (b) DATE DESCRIBED.—The date described in this
2 subsection is the date on which the WTO Agreement (as
3 defined in section 2(9)) enters into force with respect to
4 the United States.

5 **TITLE III—ADDITIONAL IMPLE-**
6 **MENTATION OF AGREEMENTS**

7 **Subtitle A—Safeguards**

8 **SEC. 301. INVESTIGATIONS, DETERMINATIONS, AND REC-**
9 **COMMENDATIONS BY INTERNATIONAL TRADE**
10 **COMMISSION.**

11 (a) TREATMENT OF CONFIDENTIAL INFORMATION.—
12 Section 202(a)(8) of the Trade Act of 1974 (19 U.S.C.
13 2252(a)(8)) is amended by adding at the end the follow-
14 ing: “The Commission may request that parties providing
15 confidential business information furnish nonconfidential
16 summaries thereof or, if such parties indicate that the in-
17 formation in the submission cannot be summarized, the
18 reasons why a summary cannot be provided. If the Com-
19 mission finds that a request for confidentiality is not war-
20 ranted and if the party concerned is either unwilling to
21 make the information public or to authorize its disclosure
22 in generalized or summarized form, the Commission may
23 disregard the submission.”.

1 (b) ADMINISTRATIVE PROTECTIVE ORDERS.—Sec-
2 tion 202 of the Trade Act of 1974 (19 U.S.C. 2252) is
3 amended by adding at the end the following:

4 “(i) LIMITED DISCLOSURE OF CONFIDENTIAL BUSI-
5 NESS INFORMATION UNDER PROTECTIVE ORDER.—The
6 Commission shall promulgate regulations to provide access
7 to confidential business information under protective order
8 to authorized representatives of interested parties who are
9 parties to an investigation under this section.”.

10 (c) NOTICE OF PROCEEDINGS.—Section 202(b) of
11 the Trade Act of 1974 (19 U.S.C. 2252(b)) is amended
12 by striking paragraphs (3) and (4) and inserting the fol-
13 lowing:

14 “(3) The Commission shall publish notice of the
15 commencement of any proceeding under this sub-
16 section in the Federal Register and shall, within a
17 reasonable time thereafter, hold public hearings at
18 which the Commission shall afford interested parties
19 and consumers an opportunity to be present, to
20 present evidence, to comment on the adjustment
21 plan, if any, submitted under subsection (a), to re-
22 spond to the presentations of other parties and con-
23 sumers, and otherwise to be heard.”.

24 (d) CRITICAL CIRCUMSTANCES.—

1 (1) IN GENERAL.—Section 202(d)(2) of the
2 Trade Act of 1974 (19 U.S.C. 2252(d)(2)) is
3 amended to read as follows:

4 “(2)(A) When a petition filed under subsection
5 (a) alleges that critical circumstances exist and re-
6 quests that provisional relief be provided under this
7 subsection with respect to imports of the article
8 identified in the petition, the Commission shall, not
9 later than 60 days after the petition containing the
10 request was filed, determine, on the basis of avail-
11 able information, whether—

12 “(i) there is clear evidence that increased
13 imports (either actual or relative to domestic
14 production) of the article are a substantial
15 cause of serious injury, or the threat thereof, to
16 the domestic industry producing an article like
17 or directly competitive with the imported arti-
18 cle; and

19 “(ii) delay in taking action under this
20 chapter would cause damage to that industry
21 that would be difficult to repair.

22 “(B) If the determinations under subparagraph
23 (A)(i) and (ii) are affirmative, the Commission shall
24 find the amount or extent of provisional relief that
25 is necessary to prevent or remedy the serious injury.

1 In carrying out this subparagraph, the Commission
2 shall give preference to increasing or imposing a
3 duty on imports, if such form of relief is feasible and
4 would prevent or remedy the serious injury.

5 “(C) The Commission shall immediately report
6 to the President its determinations under subpara-
7 graph (A)(i) and (ii) and, if the determinations are
8 affirmative, the finding under subparagraph (B).

9 “(D) Within 30 days after receiving a report
10 from the Commission under subparagraph (C) con-
11 taining an affirmative determination under subpara-
12 graph (A)(i) and (ii), the President, if he considers
13 provisional relief to be warranted and after taking
14 into account the finding of the Commission under
15 subparagraph (B), shall proclaim, for a period not to
16 exceed 200 days, such provisional relief that the
17 President considers necessary to prevent or remedy
18 the serious injury. Such relief shall take the form of
19 an increase in, or the imposition of, a duty on im-
20 ports, if such form of relief is feasible and would
21 prevent or remedy the serious injury.”.

22 (2) TIME LIMITS FOR DETERMINATIONS.—Sec-
23 tion 202 of the Trade Act of 1974 (19 U.S.C. 2252)
24 is amended—

25 (A) in subsection (b)(2)—

1 (i) in subparagraph (A) by inserting
2 “(180 days if the petition alleges that criti-
3 cal circumstances exist)” after “120 days”;
4 and

5 (ii) in subparagraph (B) by inserting
6 “(210 days if the petition alleges that criti-
7 cal circumstances exist)” after “150 days”;
8 and

9 (B) in subsection (f)(1) by inserting “(240
10 days if the petition alleges that critical cir-
11 cumstances exist)” after “180 days”.

12 (3) ACTION BY THE PRESIDENT.—Section
13 203(a)(4) of the Trade Act of 1974 (19 U.S.C.
14 2253(a)(4)) is amended—

15 (A) by striking “The” and inserting “(A)
16 Subject to subparagraph (B), the”;

17 (B) by inserting after “60 days” the fol-
18 lowing: “(50 days if the President has pro-
19 claimed provisional relief under section
20 202(d)(2)(D) with respect to the article con-
21 cerned)”; and

22 (C) by striking “; except that” and all that
23 follows through “received.” and inserting a pe-
24 riod and the following:

1 “(B) If a supplemental report is requested
2 under paragraph (5), the President shall take action
3 under paragraph (1) within 30 days after the sup-
4 plemental report is received, except that, in a case
5 in which the President has proclaimed provisional
6 relief under section 202(d)(2)(D) with respect to the
7 article concerned, action by the President under
8 paragraph (1) may not be taken later than the
9 200th day after the provisional relief was pro-
10 claimed.”.

11 (4) CONFORMING AMENDMENTS.—Section
12 202(d) of the Trade Act of 1974 (19 U.S.C.
13 2252(d)) is amended—

14 (A) in paragraph (3)—

15 (i) by striking “(2)(B)” and inserting
16 “(2)(D)”; and

17 (ii) by striking “subsection (b)(1)”
18 and inserting “paragraph (2)(A)”; and

19 (B) in paragraph (4)(A)(i) by inserting “or
20 (2)(D)” after “(1)(G)”.

21 (e) FACTORS IN MAKING DETERMINATIONS.—Sec-
22 tion 202(c) of the Trade Act of 1974 (19 U.S.C. 2252(c))
23 is amended—

24 (1) in paragraph (1)(B)(i) by inserting “pro-
25 ductivity,” after “wages,”; and

1 (2) in paragraph (6)—

2 (A) by amending subparagraph (A) to read
3 as follows:

4 “(A)(i) The term ‘domestic industry’
5 means, with respect to an article, the producers
6 as a whole of the like or directly competitive ar-
7 ticle or those producers whose collective produc-
8 tion of the like or directly competitive article
9 constitutes a major proportion of the total do-
10 mestic production of such article.

11 “(ii) The term ‘domestic industry’ includes
12 producers located in the United States insular
13 possessions.”; and

14 (B) by adding at the end the following:

15 “(C) The term ‘serious injury’ means a
16 significant overall impairment in the position of
17 a domestic industry.

18 “(D) The term ‘threat of serious injury’
19 means serious injury that is clearly imminent.

20 (f) LIMITATIONS ON INVESTIGATIONS.—Section
21 202(h) of the Trade Act of 1974 (19 U.S.C. 2252(h)) is
22 amended by adding at the end the following:

23 “(3)(A) Not later than the date on which the
24 Textiles Agreement enters into force with respect to
25 the United States, the Secretary of Commerce shall

1 publish in the Federal Register a list of all articles
2 that are subject to the Textiles Agreement. An in-
3 vestigation may be conducted under this section con-
4 cerning imports of any article that is subject to the
5 Textiles Agreement only if the United States has in-
6 tegrated that article into GATT 1994 pursuant to
7 the Textiles Agreement, as set forth in notices pub-
8 lished in the Federal Register by the Secretary of
9 Commerce, including the notice published under sec-
10 tion 331 of the Uruguay Round Agreements Act.

11 “(B) For purposes of this paragraph:

12 “(i) The term ‘Textiles Agreement’ means
13 the Agreement on Textiles and Clothing re-
14 ferred to in section 101(d)(4) of the Uruguay
15 Round Agreements Act.

16 “(ii) The term ‘GATT 1994’ has the
17 meaning given that term in section 2(1)(B) of
18 the Uruguay Round Agreements Act.”.

19 **SEC. 302. ACTION BY PRESIDENT AFTER DETERMINATION**
20 **OF IMPORT INJURY.**

21 (a) **AUTHORITY TO ENTER INTO INTERNATIONAL**
22 **AGREEMENTS.**—Section 203 of the Trade Act of 1974 (19
23 U.S.C. 2253) is amended—

24 (1) in subsection (a)(3)(E) by striking “orderly
25 marketing”;

1 (2) in subsection (d)(1) by striking “orderly
2 marketing agreements” and inserting “agreements
3 described in subsection (a)(3)(E)”;

4 (3) in subsection (f)—

5 (A) in the subsection heading by striking
6 “ORDERLY MARKETING AND OTHER” and in-
7 serting “CERTAIN”;

8 (B) in paragraph (1)—

9 (i) by striking “orderly marketing
10 agreements” the first place it appears and
11 inserting “agreements of the type de-
12 scribed in subsection (a)(3)(E)”;

13 (ii) by striking “orderly marketing
14 agreements with foreign countries” and in-
15 serting “agreements of the type described
16 in subsection (a)(3)(E)”;

17 (C) in paragraph (2) by striking “orderly
18 marketing agreement implemented under sub-
19 section (a)” and inserting “agreement imple-
20 mented under subsection (a)(3)(E)”;

21 (4) in subsection (g)(2)—

22 (A) in the first sentence by striking “or-
23 derly marketing or other”;

24 (B) in the second sentence—

1 (i) by striking “orderly marketing
2 agreement” and inserting “agreement of
3 the type described in subsection (a)(3)(E)
4 that is”; and

5 (ii) by striking “agreements” and in-
6 serting “agreement”.

7 (b) LIMITATIONS ON ACTIONS.—

8 (1) DURATION OF ACTIONS.—Section 203(e)(1)
9 of the Trade Act of 1974 (19 U.S.C. 2253(e)(1)) is
10 amended to read as follows:

11 “(1)(A) Subject to subparagraph (B), the dura-
12 tion of the period in which an action taken under
13 this section may be in effect shall not exceed 4
14 years. Such period shall include the period, if any,
15 in which provisional relief under section 202(d) was
16 in effect.

17 “(B)(i) Subject to clause (ii), the President,
18 after receiving an affirmative determination from the
19 Commission under section 204(c) (or, if the Com-
20 mission is equally divided in its determination, a de-
21 termination which the President considers to be an
22 affirmative determination of the Commission), may
23 extend the effective period of any action under this
24 section if the President determines that—

1 “(I) the action continues to be necessary to
2 prevent or remedy the serious injury; and

3 “(II) there is evidence that the domestic
4 industry is making a positive adjustment to im-
5 port competition.

6 “(ii) The effective period of any action under
7 this section, including any extensions thereof, may
8 not, in the aggregate, exceed 8 years.”.

9 (2) LIMITATION ON QUANTITATIVE RESTRIC-
10 TIONS.—Section 203(e)(4) of the Trade Act of 1974
11 (19 U.S.C. 2253(e)(4)) is amended to read as fol-
12 lows:

13 “(4) Any action taken under this section pro-
14 claiming a quantitative restriction shall permit the
15 importation of a quantity or value of the article
16 which is not less than the average quantity or value
17 of such article entered into the United States in the
18 most recent 3 years that are representative of im-
19 ports of such article and for which data are avail-
20 able, unless the President finds that the importation
21 of a different quantity or value is clearly justified in
22 order to prevent or remedy the serious injury.”.

23 (3) PHASING-DOWN OF ACTIONS.—Section
24 203(e)(5) of the Trade Act of 1974 (19 U.S.C.
25 2253(e)(5)) is amended to read as follows:

1 “(5) An action described in subsection
2 (a)(3)(A), (B), or (C) that has an effective period of
3 more than 1 year shall be phased down at regular
4 intervals during the period in which the action is in
5 effect.”.

6 (4) LIMITATIONS ON NEW ACTIONS AND INVESTIGATIONS OF SAME ARTICLE.—(A) Section 203(e)
7 of the Trade Act of 1974 (19 U.S.C. 2253(e)) is
8 amended by adding at the end the following:
9

10 “(7)(A) If an article was the subject of an ac-
11 tion under subparagraph (A), (B), (C), or (E) of
12 subsection (a)(3), no new action may be taken under
13 any of those subparagraphs with respect to such ar-
14 ticle for—

15 “(i) a period beginning on the date on
16 which the previous action terminates that is
17 equal to the period in which the previous action
18 was in effect, or

19 “(ii) a period of 2 years beginning on the
20 date on which the previous action terminates,
21 whichever is greater.

22 “(B) Notwithstanding subparagraph (A), if the
23 previous action under subparagraph (A), (B), (C), or
24 (E) of subsection (a)(3) with respect to an article
25 was in effect for a period of 180 days or less, the

1 President may take a new action under any of those
2 subparagraphs with respect to such article if—

3 “(i) at least 1 year has elapsed since the
4 previous action went into effect; and

5 “(ii) an action described in any of those
6 subparagraphs has not been taken with respect
7 to such article more than twice in the 5-year
8 period immediately preceding the date on which
9 the new action with respect to such article first
10 becomes effective.”.

11 (B) Section 202(h)(2) of the Trade Act of 1974
12 (19 U.S.C. 2252(h)(2)) is amended to read as fol-
13 lows:

14 “(2) No new investigation shall be conducted
15 with respect to an article that is or has been the
16 subject of an action under section 203(a)(3)(A), (B),
17 (C), or (E) if the last day on which the President
18 could take action under section 203 in the new in-
19 vestigation is a date earlier than that permitted
20 under section 203(e)(7).”.

21 (c) REPORTS ON MONITORING.—Section 204(a) of
22 the Trade Act of 1974 (19 U.S.C. 2354(a)) is amended—

23 (1) by amending paragraph (2) to read as fol-
24 lows:

1 “(2) If the initial period during which the ac-
2 tion taken under section 203 is in effect exceeds 3
3 years, or if an extension of such action exceeds 3
4 years, the Commission shall submit a report on the
5 results of the monitoring under paragraph (1) to the
6 President and to the Congress not later than the
7 date that is the mid-point of the initial period, and
8 of each such extension, during which the action is in
9 effect.”; and

10 (2) in paragraph (4) by striking “extension,”.

11 (d) INVESTIGATION OF EXTENSION OF ACTION.—
12 Section 204 of the Trade Act of 1974 (19 U.S.C. 2254)
13 is amended—

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

16 (2) by inserting after subsection (b) the follow-
17 ing:

18 “(c) EXTENSION OF ACTION.—

19 “(1) Upon request of the President, or upon pe-
20 tition on behalf of the industry concerned filed with
21 the Commission not earlier than the date which is
22 9 months, and not later than the date which is 6
23 months, before the date any action taken under sec-
24 tion 203 is to terminate, the Commission shall inves-
25 tigate to determine whether action under section 203

1 continues to be necessary to prevent or remedy seri-
2 ous injury and whether there is evidence that the in-
3 dustry is making a positive adjustment to import
4 competition.

5 “(2) The Commission shall publish notice of the
6 commencement of any proceeding under this sub-
7 section in the Federal Register and shall, within a
8 reasonable time thereafter, hold a public hearing at
9 which the Commission shall afford interested parties
10 and consumers an opportunity to be present, to
11 present evidence, and to respond to the presen-
12 tations of other parties and consumers, and other-
13 wise to be heard.

14 “(3) The Commission shall transmit to the
15 President a report on its investigation and deter-
16 mination under this subsection not later than 60
17 days before the action under section 203 is to termi-
18 nate, unless the President specifies a different
19 date.”.

20 **SEC. 303. MISCELLANEOUS AMENDMENTS.**

21 Title II of the Trade Act of 1974 is amended as fol-
22 lows:

23 (1) Section 202(a)(2)(B)(ii) (19 U.S.C.
24 2252(a)(2)(B)(ii)) is amended by striking “, or at

1 any time before the 150th day after the date of fil-
2 ing be amended to request.”.

3 (2) Section 202(b)(1)(A) (19 U.S.C.
4 2252(b)(1)(A)) is amended by striking “(b)” and in-
5 serting “(a)”.

6 (3) Section 202(d)(1) (19 U.S.C. 2252(d)(1)) is
7 amended—

8 (A) in subparagraph (C)(i) by striking
9 “paragraph (2)” and inserting “subparagraph
10 (B)”; and

11 (B) by striking “or threat thereof” each
12 place it appears in subparagraphs (E) and (G).

13 (4) Section 202(d)(4)(A)(i) (19 U.S.C.
14 2252(d)(4)(A)(i)) is amended by striking “203(a)”
15 and inserting “202(b)”.

16 (5) Section 202(c)(6) (19 U.S.C. 2252(c)(6)) is
17 amended by striking “subsection” and inserting
18 “section”.

19 (6) Section 202(f)(2)(G)(ii) (19 U.S.C.
20 2252(f)(2)(G)(ii)) is amended by striking “is” and
21 inserting “are”.

22 (7) Section 203(a)(2)(C) (19 U.S.C.
23 2253(a)(2)(C)) is amended by striking “201(b)” and
24 inserting “202(a)”.

1 (8) Section 203(c) (19 U.S.C. 2253(c)) is
2 amended by striking “(c)(2)” and inserting
3 “(d)(2)”.

4 (9) Section 203(e)(2) (19 U.S.C. 2253(e)(2)) is
5 amended—

6 (A) by striking “may be taken under sub-
7 section (a)(1)(A), (B), or (C) or under section
8 202(d)(2)(B)” and inserting “of a type de-
9 scribed in subsection (a)(3)(A), (B), or (C) may
10 be taken under subsection (a)(1), under section
11 202(d)(1)(G), or under section 202(d)(2)(D)”;
12 and

13 (B) by striking “or threat thereof”.

14 (10) Section 203(e)(6)(B) (19 U.S.C.
15 2253(e)(6)(B)) is amended—

16 (A) by striking “203(c)” and inserting
17 “202(e)”;

18 (B) by striking “203(a)” and inserting
19 “202(b)”.

20 **SEC. 304. EFFECTIVE DATE.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (b), this subtitle and the amendments made by this sub-
23 title take effect on the date on which the WTO Agreement
24 enters into force with respect to the United States.

1 (b) SECTION 301(b).—The amendment made by sec-
2 tion 301(b) takes effect on the date of the enactment of
3 this Act.

4 **Subtitle B—Foreign Trade Barriers**
5 **and Unfair Trade Practices**

6 **SEC. 311. IDENTIFICATION OF FOREIGN ANTICOMPETITIVE**
7 **PRACTICES.**

8 (a) REPORT TO CONGRESS.—

9 (1) CONTENTS OF REPORT.—Section 181(b)(2)
10 of the Trade Act of 1974 (19 U.S.C. 2241(b)(2)) is
11 amended—

12 (A) in subparagraph (A) by striking “or”
13 after the comma;

14 (B) in subparagraph (B) by striking the
15 period and inserting “, or”; and

16 (C) by adding after subparagraph (B) the
17 following:

18 “(C) a section on foreign anticompetitive
19 practices, the toleration of which by foreign
20 governments is adversely affecting exports of
21 United States goods or services.”.

22 (2) ASSISTANCE OF OTHER AGENCIES.—Section
23 181(c) of the Trade Act of 1974 (19 U.S.C.
24 2241(c)) is amended by adding at the end of para-
25 graph (1) the following: “In preparing the section of

1 the report required by subsection (b)(2)(C), the
2 Trade Representative shall consult in particular with
3 the Attorney General.”.

4 **SEC. 312. CONSULTATION WITH COMMITTEES.**

5 Section 181(b)(3) of the Trade Act of 1974 (19
6 U.S.C. 2241(b)(3)) is amended by adding at the end the
7 following: “After the submission of the report required by
8 paragraph (1), the Trade Representative shall also consult
9 periodically with, and take into account the views of, the
10 committees described in that paragraph regarding means
11 to address the foreign trade barriers identified in the re-
12 port, including the possible initiation of investigations
13 under section 302 or other trade actions.”.

14 **SEC. 313. IDENTIFICATION OF COUNTRIES THAT DENY PRO-**
15 **TECTION OF INTELLECTUAL PROPERTY**
16 **RIGHTS.**

17 Section 182 of the Trade Act of 1974 (19 U.S.C.
18 2242) is amended—

19 (1) in subsection (b) by adding at the end the
20 following:

21 “(4) In identifying foreign countries under
22 paragraphs (1) and (2) of subsection (a), the Trade
23 Representative shall take into account—

24 “(A) the history of intellectual property
25 laws and practices of the foreign country, in-

1 including any previous identification under sub-
2 section (a)(2), and

3 “(B) the history of efforts of the United
4 States, and the response of the foreign country,
5 to achieve adequate and effective protection and
6 enforcement of intellectual property rights.”;
7 and

8 (2) in subsection (d)—

9 (A) in paragraph (3) by amending the
10 matter preceding subparagraph (A) to read as
11 follows:

12 “(3) A foreign country denies fair and equitable
13 market access if the foreign country effectively de-
14 nies access to a market for a product protected by
15 a copyright or related right, patent, trademark,
16 mask work, trade secret, or plant breeder’s right,
17 through the use of laws, procedures, practices, or
18 regulations which—”; and

19 (B) by adding at the end the following:

20 “(4) A foreign country may be determined to
21 deny adequate and effective protection of intellectual
22 property rights, notwithstanding the fact that the
23 foreign country may be in compliance with the spe-
24 cific obligations of the Agreement on Trade-Related
25 Aspects of Intellectual Property Rights referred to in

1 section 101(d)(15) of the Uruguay Round Agree-
2 ments Act.”; and

3 (3) by adding at the end the following:

4 “(g) ANNUAL REPORT.—The Trade Representative
5 shall, by not later than the date by which countries are
6 identified under subsection (a), transmit to the Committee
7 on Ways and Means of the House of Representatives and
8 the Committee on Finance of the Senate, a report on ac-
9 tions taken under this section during the 12 months pre-
10 ceding such report, and the reasons for such actions, in-
11 cluding a description of progress made in achieving im-
12 proved intellectual property protection and market access
13 for persons relying on intellectual property rights.”.

14 **SEC. 314. AMENDMENTS TO TITLE III OF THE TRADE ACT**
15 **OF 1974.**

16 (a) SCOPE OF AUTHORITY.—

17 (1) IN GENERAL.—Subsections (a)(1) and
18 (b)(2) of section 301 of the Trade Act of 1974 (19
19 U.S.C. 2411(a)(1) and (b)(2)) are each amended by
20 adding the following sentence at the end:

21 “Actions may be taken that are within the power of the
22 President with respect to trade in any goods or services,
23 or with respect to any other area of pertinent relations
24 with the foreign country.”.

1 (2) IMPORT RESTRICTIONS.—Section 301(c)(5)
2 of the Trade Act of 1974 (19 U.S.C. 2411(c)(5)) is
3 amended by striking the matter preceding subpara-
4 graph (B) and inserting the following:

5 “(5) If the Trade Representative determines
6 that actions to be taken under subsection (a) or (b)
7 are to be in the form of import restrictions, the
8 Trade Representative shall—

9 “(A) give preference to the imposition of
10 duties over the imposition of other import re-
11 strictions, and”.

12 (b) RELATIONSHIP WITH OTHER AUTHORITIES.—
13 Section 301(c) of the Trade Act of 1974 (19 U.S.C.
14 2411(c)) is amended—

15 (1) in paragraph (1)—

16 (A) in subparagraph (B), by striking “or”
17 after the semicolon at the end;

18 (B) by redesignating subparagraph (C) as
19 subparagraph (D); and

20 (C) by inserting after subparagraph (B)
21 the following:

22 “(C) in a case in which the act, policy, or
23 practice also fails to meet the eligibility criteria
24 for receiving duty-free treatment under sub-
25 sections (b) and (c) of section 502 of this Act,

1 subsections (b) and (c) of section 212 of the
2 Caribbean Basin Economic Recovery Act (19
3 U.S.C. 2702(b) and (c)), or subsections (c) and
4 (d) of section 203 of the Andean Trade Pref-
5 erence Act (19 U.S.C. 3202(c) and (d)), with-
6 draw, limit, or suspend such treatment under
7 such provisions, notwithstanding the provisions
8 of subsection (a)(3) of this section; or”.

9 (c) DEFINITION OF AN UNREASONABLE ACT, POL-
10 ICY, OR PRACTICE.—Section 301(d)(3) of the Trade Act
11 of 1974 (19 U.S.C. 2411(d)(3)) is amended—

12 (1) in subparagraph (B)(i) by striking
13 subclauses (II) and (III) and inserting the following:

14 “(II) provision of adequate and effec-
15 tive protection of intellectual property
16 rights notwithstanding the fact that the
17 foreign country may be in compliance with
18 the specific obligations of the Agreement
19 on Trade-Related Aspects of Intellectual
20 Property Rights referred to in section
21 101(d)(15) of the Uruguay Round Agree-
22 ments Act,

23 “(III) nondiscriminatory market ac-
24 cess opportunities for United States per-

1 sons that rely upon intellectual property
2 protection, or

3 “(IV) market opportunities, including
4 the toleration by a foreign government of
5 systematic anticompetitive activities by en-
6 terprises or among enterprises in the for-
7 eign country that have the effect of re-
8 stricting, on a basis that is inconsistent
9 with commercial considerations, access of
10 United States goods or services to a for-
11 eign market,”; and

12 (2) by adding at the end the following:

13 “(F)(i) For the purposes of subparagraph
14 (B)(i)(II), adequate and effective protection of intel-
15 lectual property rights includes adequate and effec-
16 tive means under the laws of the foreign country for
17 persons who are not citizens or nationals of such
18 country to secure, exercise, and enforce rights and
19 enjoy commercial benefits relating to patents, trade-
20 marks, copyrights and related rights, mask works,
21 trade secrets, and plant breeder’s rights.

22 “(ii) For purposes of subparagraph (B)(i)(IV),
23 the denial of fair and equitable nondiscriminatory
24 market access opportunities includes restrictions on
25 market access related to the use, exploitation, or en-

1 joyment of commercial benefits derived from exercis-
2 ing intellectual property rights in protected works or
3 fixations or products embodying protected works.”.

4 (d) TIME LIMITS FOR DETERMINATIONS OF UNFAIR
5 TRADE PRACTICES.—Section 304(a) of the Trade Act of
6 1974 (19 U.S.C. 2414(a)) is amended—

7 (1) in subparagraph (A) of paragraph (2), by
8 striking “(other than the agreement on subsidies
9 and countervailing measures described in section
10 2(c)(5) of the Trade Agreements Act of 1979)”,

11 (2)(A) in subparagraph (A) of paragraph (3),
12 by inserting “does not consider that a trade agree-
13 ment, including the Agreement on Trade-Related As-
14 pects of Intellectual Property (referred to in section
15 101(d)(15) of the Uruguay Round Agreements Act),
16 is involved or” after “the Trade Representative” the
17 first place it appears, and

18 (B) in subparagraph (B) of paragraph (3), in
19 the matter preceding clause (i), by striking “any in-
20 vestigation initiated by reason of section 302(b)(2)”
21 and inserting “an investigation initiated by reason of
22 section 302(b)(2) (other than an investigation in-
23 volving a trade agreement)”, and

24 (3) in paragraph (4), by striking “(other than
25 the agreement on subsidies and countervailing meas-

1 ures described in section 2(c)(5) of the Trade Agree-
2 ments Act of 1979”.

3 (e) MONITORING OF FOREIGN COMPLIANCE.—Sub-
4 sections (a) and (b) of section 306 of the Trade Act of
5 1974 (19 U.S.C. 2416) are amended to read as follows:

6 “(a) IN GENERAL.—The Trade Representative shall
7 monitor the implementation of each measure undertaken,
8 or agreement that is entered into, by a foreign country
9 to provide a satisfactory resolution of a matter subject to
10 investigation under this chapter or subject to dispute set-
11 tlement proceedings to enforce the rights of the United
12 States under a trade agreement providing for such pro-
13 ceedings.

14 “(b) FURTHER ACTION.—

15 “(1) IN GENERAL.—If, on the basis of the mon-
16 itoring carried out under subsection (a), the Trade
17 Representative considers that a foreign country is
18 not satisfactorily implementing a measure or agree-
19 ment referred to in subsection (a), the Trade Rep-
20 resentative shall determine what further action the
21 Trade Representative shall take under section
22 301(a). For purposes of section 301, any such deter-
23 mination shall be treated as a determination made
24 under section 304(a)(1).”.

1 “(A) review United States trade expansion
2 priorities,

3 “(B) identify priority foreign country prac-
4 tices, the elimination of which is likely to have
5 the most significant potential to increase Unit-
6 ed States exports, either directly or through the
7 establishment of a beneficial precedent, and

8 “(C) submit to the Committee on Finance
9 of the Senate and the Committee on Ways and
10 Means of the House of Representatives and
11 publish in the Federal Register a report on the
12 priority foreign country practices identified.

13 “(2) In identifying priority foreign country
14 practices under paragraph (1) of this section, the
15 Trade Representative shall take into account all rel-
16 evant factors, including—

17 “(A) the major barriers and trade distort-
18 ing practices described in the National Trade
19 Estimate Report required under section 181(b);

20 “(B) the trade agreements to which a for-
21 eign country is a party and its compliance with
22 those agreements;

23 “(C) the medium- and long-term implica-
24 tions of foreign government procurement plans;
25 and

1 “(D) the international competitive position
2 and export potential of United States products
3 and services.

4 “(3) The Trade Representative may include in
5 the report, if appropriate—

6 “(A) a description of foreign country prac-
7 tices that may in the future warrant identifica-
8 tion as priority foreign country practices; and

9 “(B) a statement about other foreign coun-
10 try practices that were not identified because
11 they are already being addressed by provisions
12 of United States trade law, by existing bilateral
13 trade agreements, or as part of trade negotia-
14 tions with other countries and progress is being
15 made toward the elimination of such practices.

16 “(b) INITIATION OF INVESTIGATIONS.—By no later
17 than the date which is 21 days after the date on which
18 a report is submitted to the appropriate congressional
19 committees under subsection (a)(1), the Trade Represent-
20 ative shall initiate under section 302(b)(1) investigations
21 under this chapter with respect to all of the priority for-
22 eign country practices identified.

23 “(c) AGREEMENTS FOR THE ELIMINATION OF BAR-
24 RIERS.—In the consultations with a foreign country that
25 the Trade Representative is required to request under sec-

1 tion 303(a) with respect to an investigation initiated by
2 reason of subsection (b), the Trade Representative shall
3 seek to negotiate an agreement that provides for the elimi-
4 nation of the practices that are the subject of the inves-
5 tigation as quickly as possible or, if elimination of the
6 practices is not feasible, an agreement that provides for
7 compensatory trade benefits.

8 “(d) REPORTS.—The Trade Representative shall in-
9 clude in the semiannual report required by section 309
10 a report on the status of any investigations initiated pur-
11 suant to subsection (b) and, where appropriate, the extent
12 to which such investigations have led to increased opportu-
13 nities for the export of products and services of the United
14 States.”.

15 **SEC. 315. OBJECTIVES IN INTELLECTUAL PROPERTY.**

16 It is the objective of the United States—

17 (1) to accelerate the implementation of the
18 Agreement on Trade-Related Aspects of Intellectual
19 Property Rights referred to in section 101(d)(15),

20 (2) to seek enactment and effective implementa-
21 tion by foreign countries of laws to protect and en-
22 force intellectual property rights that supplement
23 and strengthen the standards of the Agreement on
24 Trade-Related Aspects of Intellectual Property
25 Rights referred to in section 101(d)(15) and the

1 North American Free Trade Agreement and, in par-
2 ticular—

3 (A) to conclude bilateral and multilateral
4 agreements that create obligations to protect
5 and enforce intellectual property rights that
6 cover new and emerging technologies and new
7 methods of transmission and distribution, and

8 (B) to prevent or eliminate discrimination
9 with respect to matters affecting the availabil-
10 ity, acquisition, scope, maintenance, use, and
11 enforcement of intellectual property rights,

12 (3) to secure fair, equitable, and nondiscrim-
13 inatory market access opportunities for United
14 States persons that rely upon intellectual property
15 protection,

16 (4) to take an active role in the development of
17 the intellectual property regime under the World
18 Trade Organization to ensure that it is consistent
19 with other United States objectives, and

20 (5) to take an active role in the World Intellec-
21 tual Property Organization (WIPO) to develop a co-
22 operative and mutually supportive relationship be-
23 tween the World Trade Organization and WIPO.

1 **SEC. 316. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), this subtitle and the amendments made by this sub-
4 title take effect on the date on which the WTO Agreement
5 enters into force with respect to the United States.

6 (b) SECTION 314(f).—The amendment made by sec-
7 tion 314(f) takes effect on the date of the enactment of
8 this Act.

9 **Subtitle C—Unfair Practices in**
10 **Import Trade**

11 **SEC. 321. UNFAIR PRACTICES IN IMPORT TRADE.**

12 (a) AMENDMENTS TO SECTION 337 OF THE TARIFF
13 ACT OF 1930.—Section 337 of the Tariff Act of 1930 (19
14 U.S.C. 1337) is amended as follows:

15 (1) INVESTIGATION.—Subsection (b) is amend-
16 ed—

17 (A) by striking “; TIME LIMITS” in the
18 heading;

19 (B) in paragraph (1) by striking all that
20 follows the second sentence and inserting the
21 following: “The Commission shall conclude any
22 such investigation and make its determination
23 under this section at the earliest practicable
24 time after the date of publication of notice of
25 such investigation. To promote expeditious ad-
26 judication, the Commission shall, within 45

1 days after an investigation is initiated, establish
2 a target date for its final determination.”; and

3 (C) in paragraph (3)—

4 (i) in the first sentence—

5 (I) by striking “the Tariff Act of
6 1930” and inserting “this Act”; and

7 (II) by striking “such Act” and
8 inserting “such subtitle”; and

9 (ii) by striking the fifth sentence.

10 (2) DETERMINATION; REVIEW.—Subsection (c)
11 is amended—

12 (A) in the first sentence by striking “a set-
13 tlement agreement” and inserting “an agree-
14 ment between the private parties to the inves-
15 tigation, including an agreement to present the
16 matter for arbitration”;

17 (B) by inserting the following after the
18 third sentence: “A respondent may raise any
19 counterclaim in a manner prescribed by the
20 Commission. Immediately after a counterclaim
21 is received by the Commission, the respondent
22 raising such counterclaim shall file a notice of
23 removal with a United States district court in
24 which venue for any of the counterclaims raised
25 by the party would exist under section 1391 of

1 title 28, United States Code. Any counterclaim
2 raised pursuant to this section shall relate back
3 to the date of the original complaint in the pro-
4 ceeding before the Commission. Action on such
5 counterclaim shall not delay or affect the pro-
6 ceeding under this section, including the legal
7 and equitable defenses that may be raised
8 under this subsection.”; and

9 (C) by adding at the end the following:

10 “Determinations by the Commission under sub-
11 sections (e), (f), and (j) with respect to forfeit-
12 ure of bonds and under subsection (h) with re-
13 spect to the imposition of sanctions for abuse of
14 discovery or abuse of process shall also be
15 reviewable in accordance with section 706 of
16 title 5, United States Code.”.

17 (3) ENTRY UNDER BOND.—Subsection (e) is
18 amended—

19 (A) in the last sentence of paragraph (1)
20 by striking “determined by the Commission”
21 and all that follows through the end of the sen-
22 tence and inserting “prescribed by the Sec-
23 retary in an amount determined by the Com-
24 mission to be sufficient to protect the complain-
25 ant from any injury. If the Commission later

1 determines that the respondent has violated the
2 provisions of this section, the bond may be for-
3 feited to the complainant.”;

4 (B) by adding at the end of paragraph (2)
5 the following: “If the Commission later deter-
6 mines that the respondent has not violated the
7 provisions of this section, the bond may be for-
8 feited to the respondent.”; and

9 (C) by adding at the end the following new
10 paragraph:

11 “(4) The Commission shall prescribe the terms and
12 conditions under which bonds may be forfeited under
13 paragraphs (1) and (2).”.

14 (4) CEASE AND DESIST ORDERS.—Subsection
15 (f)(1) is amended by adding at the end the follow-
16 ing: “If a temporary cease and desist order is issued
17 in addition to, or in lieu of, an exclusion order under
18 subsection (e), the Commission may require the com-
19 plainant to post a bond, in an amount determined
20 by the Commission to be sufficient to protect the re-
21 spondent from any injury, as a prerequisite to the
22 issuance of an order under this subsection. If the
23 Commission later determines that the respondent
24 has not violated the provisions of this section, the
25 bond may be forfeited to the respondent. The Com-

1 mission shall prescribe the terms and conditions
2 under which the bonds may be forfeited under this
3 paragraph.”.

4 (5) CONDITIONS APPLICABLE FOR GENERAL
5 EXCLUSION ORDERS.—(A) Subsection (d) is amend-
6 ed—

7 (i) by inserting “(1)” before “If”;

8 (ii) in the first sentence by striking “there
9 is violation” and inserting “there is a viola-
10 tion”; and

11 (iii) by adding at the end the following new
12 paragraph:

13 “(2) The authority of the Commission to order an
14 exclusion from entry of articles shall be limited to persons
15 determined by the Commission to be violating this section
16 unless the Commission determines that—

17 “(A) a general exclusion from entry of articles
18 is necessary to prevent circumvention of an exclusion
19 order limited to products of named persons; or

20 “(B) there is a pattern of violation of this sec-
21 tion and it is difficult to identify the source of in-
22 fringing products.”.

23 (B) Subsection (g)(2) is amended—

24 (i) by striking “and” at the end of sub-
25 paragraph (A);

1 (ii) by striking the period at the end of
2 subparagraph (B) and inserting “, and”; and

3 (iii) by adding after subparagraph (B) the
4 following:

5 “(C) the requirements of subsection (d)(2) are
6 met.”.

7 (6) ENTRY UNDER BOND AFTER REFERRAL TO
8 THE PRESIDENT.—Subsection (j)(3) is amended by
9 striking “shall be entitled to entry under bond” and
10 all that follows through the end of the sentence and
11 inserting “shall, until such determination becomes
12 final, be entitled to entry under bond prescribed by
13 the Secretary in an amount determined by the Com-
14 mission to be sufficient to protect the complainant
15 from any injury. If the determination becomes final,
16 the bond may be forfeited to the complainant. The
17 Commission shall prescribe the terms and conditions
18 under which bonds may be forfeited under this para-
19 graph.”.

20 (7) ACCESS TO CONFIDENTIAL INFORMATION.—
21 Subsection (n)(2) is amended—

22 (A) by amending subparagraph (A) to read
23 as follows:

24 “(A) an officer or employee of the Commission
25 who is directly concerned with—

1 “(i) carrying out the investigation or relat-
2 ed proceeding in connection with which the in-
3 formation is submitted,

4 “(ii) the administration of a bond posted
5 pursuant to subsection (e), (f), or (j),

6 “(iii) the administration or enforcement of
7 an exclusion order issued pursuant to sub-
8 section (d), (e), or (g), a cease and desist order
9 issued pursuant to subsection (f), or a consent
10 order issued pursuant to subsection (c),

11 “(iv) proceedings for the modification or
12 rescission of a temporary or permanent order
13 issued under subsection (d), (e), (f), (g), or (i),
14 or a consent order issued under this section, or

15 “(v) maintaining the administrative record
16 of the investigation or related proceeding,”; and

17 (B) by amending subparagraph (C) to read
18 as follows:

19 “(C) an officer or employee of the United
20 States Customs Service who is directly involved in
21 administering an exclusion from entry under sub-
22 section (d), (e), or (g) resulting from the investiga-
23 tion or related proceeding in connection with which
24 the information is submitted.”.

1 (8) TECHNICAL AMENDMENT.—Subsection (l) is
2 amended by striking “Claims Court” and inserting
3 “Court of Federal Claims”.

4 (b) AMENDMENTS TO TITLE 28, UNITED STATES
5 CODE.—

6 (1) STAY OF ACTIONS.—

7 (A) IN GENERAL.—Chapter 111 of title
8 28, United States Code, is amended by adding
9 at the end the following new section:

10 **“§ 1659. Stay of certain actions pending disposition of**
11 **related proceedings before the United**
12 **States International Trade Commission**

13 “(a) STAY.—In a civil action involving parties that
14 are also parties to a proceeding before the United States
15 International Trade Commission under section 337 of the
16 Tariff Act of 1930, at the request of a party to the civil
17 action that is also a respondent in the proceeding before
18 the Commission, the district court shall stay, until the de-
19 termination of the Commission becomes final, proceedings
20 in the civil action with respect to any claim that involves
21 the same issues involved in the proceeding before the Com-
22 mission, but only if such request is made within—

23 “(1) 30 days after the party is named as a re-
24 spondent in the proceeding before the Commission,
25 or

1 “(2) 30 days after the district court action is
2 filed,
3 whichever is later.

4 “(b) USE OF COMMISSION RECORD.—Notwithstand-
5 ing section 337(n)(1) of the Tariff Act of 1930, after dis-
6 solution of a stay under subsection (a), the record of the
7 proceeding before the United States International Trade
8 Commission shall be transmitted to the district court and
9 shall be admissible in the civil action, subject to such pro-
10 tective order as the district court determines necessary,
11 to the extent permitted under the Federal Rules of Evi-
12 dence and the Federal Rules of Civil Procedure.”.

13 (B) CLERICAL AMENDMENT.—The table of
14 sections for chapter 111 of title 28, United
15 States Code, is amended by adding at the end
16 the following new item:

 “1659. Stay of certain actions pending disposition of related proceedings before
 the United States International Trade Commission.”.

17 (2) COUNTERCLAIMS.—Section 1446 of title 28,
18 United States Code, is amended by adding at the
19 end the following:

20 “(f) With respect to any counterclaim removed to a
21 district court pursuant to section 337(c) of the Tariff Act
22 of 1930, the district court shall resolve such counterclaim
23 in the same manner as an original complaint under the
24 Federal Rules of Civil Procedure, except that the payment

1 of a filing fee shall not be required in such cases and the
2 counterclaim shall relate back to the date of the original
3 complaint in the proceeding before the International
4 Trade Commission under section 337 of that Act.”.

5 (3) JURISDICTION.—

6 (A) IN GENERAL.—Chapter 85 of title 28,
7 United States Code, is amended by adding at
8 the end the following:

9 **“§ 1368. Counterclaims in unfair practices in inter-**
10 **national trade.**

11 “The district courts shall have original jurisdiction
12 of any civil action based on a counterclaim raised pursuant
13 to section 337(c) of the Tariff Act of 1930, to the extent
14 that it arises out of the transaction or occurrence that is
15 the subject matter of the opposing party’s claim in the
16 proceeding under section 337(a) of that Act.”.

17 (B) CLERICAL AMENDMENT.—The table of
18 sections for chapter 85 of title 28, United
19 States Code, is amended by adding at the end
20 the following:

“1368. Counterclaims in unfair practices in international trade.”.

21 **SEC. 322. EFFECTIVE DATE.**

22 The amendments made by this subtitle apply—

23 (1) with respect to complaints filed under sec-
24 tion 337 of the Tariff Act of 1930 on or after the

1 date on which the WTO Agreement enters into force
2 with respect to the United States, or

3 (2) in cases under such section 337 in which no
4 complaint is filed, with respect to investigations ini-
5 tiated under such section on or after such date.

6 **Subtitle D—Textiles**

7 **SEC. 331. TEXTILE PRODUCT INTEGRATION.**

8 Not later than 120 days after the date that the WTO
9 Agreement, as defined in section 2(9) of the Uruguay
10 Round Implementation Act, enters into force with respect
11 to the United States, the Secretary of Commerce shall
12 publish in the Federal Register a notice containing the list
13 of products to be integrated in each stage set out in Article
14 2(8) of the Agreement on Textiles and Clothing referred
15 to in section 101(d)(4). After publication of such list, the
16 list may not be changed unless otherwise required by stat-
17 ute or the international obligations of the United States,
18 to correct technical errors, or to reflect reclassifications.
19 Within 30 days after the publication of such list, the
20 Trade Representative shall notify the list to the Textiles
21 Monitoring Body established under Article 8 of the Agree-
22 ment on Textiles and Clothing.

1 **SEC. 332. AMENDMENT TO SECTION 204 OF THE AGRICUL-**
2 **TURAL ACT OF 1956.**

3 Section 204 of the Agricultural Act of 1956 (7 U.S.C.
4 1854) is amended by amending the second sentence to
5 read as follows: "In addition, if a multilateral agreement,
6 including but not limited to the Agreement on Textiles and
7 Clothing referred to in section 101(d)(4) of the Uruguay
8 Round Implementation Act, has been or is concluded
9 under the authority of this section among countries ac-
10 counting for a significant part of world trade in the arti-
11 cles with respect to which the agreement was concluded,
12 the President may also issue, in order to carry out such
13 agreement, regulations governing the entry or withdrawal
14 from warehouse of the same articles which are the prod-
15 ucts of countries not parties to the agreement, or countries
16 to which the United States does not apply the agree-
17 ment."

18 **SEC. 333. TEXTILE TRANSSHIPMENTS.**

19 Part V of title IV of the Tariff Act of 1930 is amend-
20 ed by inserting after section 592 the following:

21 **"SEC. 592A. SPECIAL PROVISIONS REGARDING CERTAIN**
22 **VIOLATIONS.**

23 "(a) PUBLICATION OF NAMES OF CERTAIN VIOLA-
24 TIONS.—

25 "(1) PUBLICATION.—The Secretary of the
26 Treasury is authorized to publish in the Federal

1 Register a list of the name of any producer, manu-
2 facturer, supplier, seller, exporter, or other person
3 located outside the customs territory of the United
4 States—

5 “(A) against whom the Customs Service
6 has issued a penalty claim under section 592,
7 and

8 “(B) if a petition with respect to that
9 claim has been filed under section 618, against
10 whom a final decision has been issued under
11 such section after exhaustion of administrative
12 remedies,

13 citing any of the violations of the customs laws re-
14 ferred to in paragraph (2). Such list shall be pub-
15 lished not later than March 31 and September 30 of
16 each year.

17 “(2) VIOLATIONS.— The violations of the cus-
18 toms laws referred to in paragraph (1) are the fol-
19 lowing:

20 “(A) Using documentation, or providing
21 documentation subsequently used by the im-
22 porter of record, which indicates a false or
23 fraudulent country of origin or source of textile
24 or apparel products.

1 “(B) Using counterfeit visas, licenses, per-
2 mits, bills of lading, or similar documentation,
3 or providing counterfeit visas, licenses, permits,
4 bills of lading, or similar documentation that is
5 subsequently used by the importer of record,
6 with respect to the entry into the customs terri-
7 tory of the United States of textile or apparel
8 products.

9 “(C) Manufacturing, producing, supplying,
10 or selling textile or apparel products which are
11 falsely or frauduently labelled as to country of
12 origin or source.

13 “(D) Engaging in practices which aid or
14 abet the transshipment, through a country
15 other than the country of origin, of textile or
16 apparel products in a manner which conceals
17 the true origin of the textile or apparel products
18 or permits the evasion of quotas on, or vol-
19 untary restraint agreements with respect to, im-
20 ports of textile or apparel products.

21 “(3) REMOVAL FROM LIST.—Any person whose
22 name has been included in a list published under
23 paragraph (1) may petition the Secretary to be re-
24 moved from such list. If the Secretary finds that
25 such person has not committed any violations de-

1 scribed in paragraph (2) for a period of not less
2 than 3 years after the date on which the person's
3 name was so published, the Secretary shall remove
4 such person from the list as of the next publication
5 of the list under paragraph (2).

6 “(4) REASONABLE CARE REQUIRED FOR SUBSE-
7 QUENT IMPORTS.—

8 “(A) RESPONSIBILITY OF IMPORTERS AND
9 OTHERS.—After the name of a person has been
10 published under paragraph (1), the Secretary of
11 the Treasury shall require any importer of
12 record entering, introducing, or attempting to
13 introduce into the commerce of the United
14 States textile or apparel products that were ei-
15 ther directly or indirectly produced, manufac-
16 tured, supplied, sold, exported, or transported
17 by such named person to show, to the satisfac-
18 tion of the Secretary, that such importer has
19 exercised reasonable care to ensure that the tex-
20 tile or apparel products are accompanied by
21 documentation, packaging, and labelling that
22 are accurate as to its origin. Such reasonable
23 care shall not include reliance solely on a source
24 of information which is the named person.

1 “(B) FAILURE TO EXERCISE REASONABLE
2 CARE.—If the Customs Service determines that
3 merchandise is not from the country claimed on
4 the documentation accompanying the merchan-
5 dise, the failure to exercise reasonable care de-
6 scribed in subparagraph (A) shall be considered
7 when the Customs Service determines whether
8 the importer of record is in violation of section
9 484(a).

10 “(b) LIST OF HIGH RISK COUNTRIES.—

11 “(1) LIST.—The President or his designee,
12 upon the advice of the Secretaries of Commerce and
13 Treasury, and the heads of other appropriate de-
14 partments and agencies, is authorized to publish a
15 list of countries in which illegal activities have oc-
16 curred involving transshipped textile or apparel
17 products or activities designed to evade quotas of the
18 United States on textile or apparel products, if those
19 countries fail to demonstrate a good faith effort to
20 cooperate with United States authorities in ceasing
21 such activities. Such list shall be published in the
22 Federal Register not later than March 31 of each
23 year. Any country that is on the list and that subse-
24 quently demonstrates a good faith effort to cooper-
25 ate with United States authorities in ceasing illegal

1 activities described in the first sentence shall be re-
2 moved from the list, and such removal shall be pub-
3 lished in the Federal Register as soon as practicable.

4 “(2) REASONABLE CARE REQUIRED FOR SUBSE-
5 QUENT IMPORTS.—

6 “(A) RESPONSIBILITY OF IMPORTERS OF
7 RECORD.—The Secretary of the Treasury shall
8 require any importer of record entering, intro-
9 ducing, or attempting to introduce into the
10 commerce of the United States textile or ap-
11 parel products indicated, on the documentation,
12 packaging, or labelling accompanying such
13 products, to be from any country on the list
14 published under paragraph (1) to show, to the
15 satisfaction of the Secretary, that such im-
16 porter, consignee, or purchaser has exercised
17 reasonable care to ascertain the true country of
18 origin of the textile or apparel products.

19 “(B) FAILURE TO EXERCISE REASONABLE
20 CARE.—If the Customs Service determines that
21 merchandise is not from the country claimed on
22 the documentation accompanying the merchan-
23 dise, the failure to exercise reasonable care de-
24 scribed in subparagraph (A) shall be considered
25 when the Customs Service determines whether

1 the importer of record is in violation of section
2 484(a).

3 “(3) DEFINITION.—For purposes of this sub-
4 section, the term ‘country’ means a foreign country
5 or territory, including any overseas dependent terri-
6 tory or possession of a foreign country.”.

7 **SEC. 334. RULES OF ORIGIN FOR TEXTILE AND APPAREL**
8 **PRODUCTS.**

9 (a) REGULATORY AUTHORITY.—The Secretary of the
10 Treasury shall prescribe rules implementing the principles
11 contained in subsection (b) for determining the origin of
12 textiles and apparel products. Such rules shall be promul-
13 gated in final form not later than July 1, 1995.

14 (b) PRINCIPLES.—

15 (1) IN GENERAL.—Except as otherwise pro-
16 vided for by statute, a textile or apparel product, for
17 purposes of the customs laws and the administration
18 of quantitative restrictions, originates in a country,
19 territory, or insular possession, and is the growth,
20 product, or manufacture of that country, territory,
21 or insular possession, if—

22 (A) the product is wholly obtained or pro-
23 duced in that country, territory, or possession;

24 (B) the product is a yarn, thread, twine,
25 cordage, rope, cable, or braiding and—

1 (i) the constituent staple fibers are
2 spun in that country, territory, or posses-
3 sion, or

4 (ii) the continuous filament is ex-
5 truded in that country, territory, or posses-
6 sion,

7 (C) the product is a fabric, including a
8 fabric classified under chapter 59 of the HTS,
9 and the constituent fibers, filaments, or yarns
10 are woven, knitted, needled, tufted, felted, en-
11 tangled, or transformed by any other fabric-
12 making process in that country, territory, or
13 possession; or

14 (D) the product is any other textile or ap-
15 parel product that is wholly assembled in that
16 country, territory, or possession from its compo-
17 nent pieces.

18 (2) SPECIAL RULES.—Notwithstanding para-
19 graph (1)(D)—

20 (A) the origin of a good that is classified
21 under one of the following HTS headings or
22 subheadings shall be determined under subpara-
23 graph (A), (B), or (C) of paragraph (1), as ap-
24 propriate: 5609, 5807, 5811, 6209.20.50.40,

1 6213, 6214, 6301, 6302, 6303, 6304, 6305,
2 6306, 6307.10, 6307.90, 6308, or 9404.90; and

3 (B) a textile or apparel product which is
4 knit to shape shall be considered to originate in,
5 and be the growth, product, or manufacture of,
6 the country, territory, or possession in which it
7 is knit.

8 (3) MULTICOUNTRY RULE.—If the origin of a
9 good cannot be determined under paragraph (1) or
10 (2), then that good shall be considered to originate
11 in, and be the growth, product, or manufacture of—

12 (A) the country, territory, or possession in
13 which the most important assembly or manufac-
14 turing process occurs, or

15 (B) if the origin of the good cannot be de-
16 termined under subparagraph (A), the last
17 country, territory, or possession in which impor-
18 tant assembly or manufacturing occurs.

19 (4) COMPONENTS CUT IN THE UNITED
20 STATES.—(A) The value of a component that is cut
21 to shape (but not to length, width, or both) in the
22 United States from foreign fabric and exported to
23 another country, territory, or insular possession for
24 assembly into an article that is then returned to the
25 United States—

1 (i) shall not be included in the dutiable
2 value of such article, and

3 (ii) may be applied toward determining the
4 percentage referred to in General Note
5 7(b)(i)(B) of the HTS, subject to the limitation
6 provided in that note.

7 (B) No article (except a textile or apparel prod-
8 uct) assembled in whole of components described in
9 subparagraph (A), or of such components and com-
10 ponents that are products of the United States, in
11 a beneficiary country as defined in General Note
12 7(a) of the HTS shall be treated as a foreign article,
13 or as subject to duty if—

14 (i) the components after exportation from
15 the United States, and

16 (ii) the article itself before importation into
17 the United States

18 do not enter into the commerce of any foreign coun-
19 try other than such a beneficiary country.

20 (5) EXCEPTION FOR UNITED STATES-ISRAEL
21 FREE TRADE AGREEMENT.—This section shall not
22 affect, for purposes of the customs laws and admin-
23 istration of quantitative restrictions, the status of
24 goods that, under rulings and administrative prac-
25 tices in effect immediately before the enactment of

1 this Act, would have originated in, or been the
2 growth, product, or manufacture of, a country that
3 is a party to an agreement with the United States
4 establishing a free trade area, which entered into
5 force before January 1, 1987. For such purposes,
6 such rulings and administrative practices that were
7 applied, immediately before the enactment of this
8 Act, to determine the origin of textile and apparel
9 products covered by such agreement shall continue
10 to apply after the enactment of this Act, and on and
11 after the effective date described in subsection (c),
12 unless such rulings and practices are modified by
13 the mutual consent of the parties to the agreement.

14 (c) EFFECTIVE DATE.—This section shall apply to
15 goods entered, or withdrawn from warehouse, for con-
16 sumption on or after July 1, 1996, except that this section
17 shall not apply to goods if—

18 (1) the contract for the sale of such goods to
19 the United States is entered into before July 20,
20 1994;

21 (2) all of the material terms of sale in such con-
22 tract, including the price and quantity of the goods,
23 are fixed and determinable before July 20, 1994;

24 (3) a copy of the contract is filed with the Com-
25 missioner of Customs within 60 days after the date

1 of the enactment of this Act, together with a certifi-
2 cation that the contract meets the requirements of
3 paragraphs (1) and (2); and

4 (4) the goods are entered, or withdrawn from
5 warehouse, for consumption on or before January 1,
6 1998.

7 The origin of goods to which this section does not apply
8 shall be determined in accordance with the applicable rules
9 in effect on July 20, 1994.

10 **SEC. 335. EFFECTIVE DATE.**

11 Except as provided in section 334, this subtitle and
12 the amendments made by this subtitle take effect on the
13 date on which the WTO Agreement enters into force with
14 respect to the United States.

15 **Subtitle E—Government**
16 **Procurement**

17 **SEC. 341. MONITORING AND ENFORCEMENT OF THE**
18 **AGREEMENT ON GOVERNMENT PROCURE-**
19 **MENT.**

20 (a) IN GENERAL.—Section 305(f)(2) of the Trade
21 Agreements Act of 1979 (19 U.S.C. 2515(f)(2)) is amend-
22 ed—

23 (1) in the matter preceding subparagraph (A),
24 by striking “a year” and inserting “the 18 months”,

1 (2) by striking “or” at the end of subparagraph
2 (B),

3 (3) by redesignating subparagraph (C) as sub-
4 paragraph (D), and

5 (4) by inserting after subparagraph (B), the
6 following new subparagraph:

7 “(C) the procedures result in a determina-
8 tion providing a specific period of time for the
9 other participant to bring its practices into
10 compliance with the Agreement, or”.

11 (b) SANCTIONS AFTER DISPUTE RESOLUTION
12 FAILS.—

13 (1) SANCTIONS.—Paragraph (3) of section
14 305(f) of such Act (19 U.S.C. 2515(f)(3)) is amend-
15 ed to read as follows:

16 “(3) SANCTIONS AFTER DISPUTE RESOLUTION
17 FAILS.—

18 “(A) FAILURES RESULTING IN SANC-
19 TIONS.—If—

20 “(i) within 18 months from the date
21 dispute settlement procedures are initiated
22 with a signatory country pursuant to this
23 section—

24 “(I) such procedures are not con-
25 cluded, or

1 “(II) the country has not met the
2 requirements of subparagraph (A) or
3 (B) of paragraph (2), or

4 “(ii) the period of time provided for
5 pursuant to paragraph (2)(C) has expired
6 and procedures for suspending concessions
7 under the Agreement have been completed,
8 then the sanctions described in subparagraph
9 (B) shall be imposed.

10 “(B) SANCTIONS.—

11 “(i) IN GENERAL.—If subparagraph
12 (A) applies to any signatory country—

13 “(I) the signatory country shall
14 be considered as a signatory not in
15 good standing of the Agreement and
16 the prohibition on procurement con-
17 tained in section 4 of the Act of
18 March 3, 1933 (41 U.S.C. 10b-1)
19 shall apply to such country, and

20 “(II) the President shall revoke
21 the waiver of discriminatory purchas-
22 ing requirements granted to the signa-
23 tory country pursuant to section
24 301(a).

1 “(ii) TIME SANCTIONS ARE IM-
2 POSED.—Any sanction—

3 “(I) described in clause (i)(I)
4 shall apply from the date that is the
5 last day of the 18-month period de-
6 scribed in subparagraph (A)(i) or, in
7 the case of paragraph (2)(C), from
8 the date procedures for suspending
9 concessions under the Agreement have
10 been completed, and

11 “(II) described in clause (i)(II)
12 shall apply beginning on the day after
13 the date described in subclause (I).”.

14 (2) CONFORMING AMENDMENT.—Paragraph (4)
15 of section 305(f) of such Act (19 U.S.C. 2515(f)(4))
16 is amended by striking “subparagraph (A) or (B) of
17 paragraph (3)” and inserting “subclause (I) or (II)
18 of paragraph (3)(B)(i)”.

19 (c) REPORT TO CONGRESS.—

20 (1) Section 305(d)(2) of the Trade Agreements
21 Act of 1979 (19 U.S.C. 2515(d)(2)) is amended by
22 adding at the end the following new subparagraphs:

23 “(D)(i) are not signatories to the Agree-
24 ment;

1 “(ii) fail to apply transparent and competi-
2 tive procedures to its government procurement
3 equivalent to those in the Agreement; and

4 “(iii) whose products or services are ac-
5 quired in significant amounts by the United
6 States Government; or

7 “(E)(i) are not signatories to the Agree-
8 ment;

9 “(ii) fail to maintain and enforce effective
10 prohibitions on bribery and other corrupt prac-
11 tices in connection with government procure-
12 ment; and

13 “(iii) whose products or services are ac-
14 quired in significant amounts by the United
15 States Government.”.

16 (2) Section 305(d)(3)(C) of the Trade Agree-
17 ments Act of 1979 (19 U.S.C. 2515(d)(3)(C)) is
18 amended by adding before the period at the end the
19 following: “, including the failure to maintain and
20 enforce effective prohibitions on bribery and other
21 corrupt practices in connection with government pro-
22 curement”.

23 **SEC. 342. CONFORMING AMENDMENTS.**

24 (a) WAIVER OF DISCRIMINATORY PURCHASING RE-
25 QUIREMENTS REGARDING PURCHASES OF CIVIL AIR-

1 CRAFT.—Section 303 of the Trade Agreements Act of
2 1979 (19 U.S.C. 2513) is amended by inserting “referred
3 to in section 2(c) and approved under section 2(a)” after
4 “Civil Aircraft”.

5 (b) EXPANSION OF COVERAGE OF THE AGREE-
6 MENT.—Section 304 of the Trade Agreements Act of 1979
7 (19 U.S.C. 2514) is amended—

8 (1) in subsections (a) and (c) by striking “part
9 IX, paragraph 6” and inserting “article XXIV(7);

10 (2) in subsection (c) by striking “part VI, para-
11 graph 9” and inserting “article XIX(5)”; and

12 (3) in subsection (e) by striking “date of enact-
13 ment of this Act” and inserting “date it enters into
14 force with respect to the United States”.

15 (c) ANNUAL REPORT ON FOREIGN DISCRIMINA-
16 TION.—Section 305(d) of the Trade Agreements Act of
17 1979 (19 U.S.C. 2515(d)) is amended by striking out
18 “April 30, 1990, and annually on April 30 thereafter,”
19 and inserting “April 30 of each year,”.

20 (d) LABOR SURPLUS AREA STUDIES.—Section 306
21 of the Trade Agreements Act of 1979 (19 U.S.C. 2516),
22 and the item relating to such section in the table of con-
23 tents for such Act, are repealed.

24 (e) AVAILABILITY OF INFORMATION TO CONGRES-
25 SIONAL ADVISORS.—Section 307 of the Trade Agreements

1 Act of 1979 (19 U.S.C. 2517) is amended by striking
2 “part VI, paragraph 9,” and inserting “article XIX(5)”.

3 (f) DEFINITIONS.—Section 308 of the Trade Agree-
4 ments Act of 1979 (19 U.S.C. 2518) is amended—

5 (1) in paragraph (1) by striking “section 2(c)
6 of this Act” and inserting “section 101(d)(17) of the
7 Uruguay Round Agreements Act”; and

8 (2) in paragraph (4)—

9 (A) in subparagraph (C) by striking “hav-
10 ing a contract value” and all that follows
11 through the end of the subparagraph and in-
12 serting “for which the United States is obli-
13 gated to waive Buy National restrictions
14 under—

15 “(i) the Agreement on the Establish-
16 ment of a Free Trade Area between the
17 Government of the United States of Amer-
18 ica and the Government of Israel, regard-
19 less of the thresholds provided for in the
20 Agreement (as defined in paragraph (1)),
21 or

22 “(ii) any subsequent agreement be-
23 tween the United States and Israel which
24 lowers on a reciprocal basis the applicable

1 threshold for entities covered by the Agree-
2 ment.”; and

3 (B) in subparagraph (D) by striking
4 “GATT” the first place it appears and all that
5 follows through the end of the subparagraph
6 and inserting “the Agreement (as defined in
7 paragraph (1)), but for the thresholds provided
8 for in the Agreement.”.

9 (g) CONFORMING AMENDMENTS.—Section 401 of the
10 Rural Electrification Act of 1938 (7 U.S.C. 903 note) is
11 amended—

12 (1) by striking “, Mexico, or Canada” each
13 place that it appears and inserting “or in any eligi-
14 ble country”; and

15 (2) by adding at the end the following: “For
16 purposes of this section, an ‘eligible country’ is any
17 country that applies with respect to the United
18 States an agreement ensuring reciprocal access for
19 United States products and services and United
20 States suppliers to the markets of that country, as
21 determined by the United States Trade Representa-
22 tive.”.

1 **SEC. 343. RECIPROCAL COMPETITIVE PROCUREMENT**
2 **PRACTICES.**

3 (a) APPLICABILITY.—Section 302(a) of the Trade
4 Agreements Act of 1979 (19 U.S.C. 2512(a)) is amended
5 to read as follows:

6 “(a) AUTHORITY TO BAR PROCUREMENT FROM
7 NON-DESIGNATED COUNTRIES.—

8 “(1) IN GENERAL.—Subject to paragraph (2),
9 the President, in order to encourage additional coun-
10 tries to become parties to the Agreement and to pro-
11 vide appropriate reciprocal competitive government
12 procurement opportunities to United States products
13 and suppliers of such products—

14 “(A) shall, with respect to procurement
15 covered by the Agreement, prohibit the procure-
16 ment, after the date on which any waiver under
17 section 301(a) first takes effect, of products—

18 “(i) which are products of a foreign
19 country or instrumentality which is not
20 designated pursuant to section 301(b), and

21 “(ii) which would otherwise be eligible
22 products; and

23 “(B) may, with respect to procurement
24 covered by the Agreement, take such other ac-
25 tions within the President’s authority as the
26 President deems necessary.

1 “(2) EXCEPTION.—Paragraph (1) shall not
2 apply in the case of procurements for which—

3 “(A) there are no offers of products or
4 services of the United States or of eligible prod-
5 ucts; or

6 “(B) the offers of products or services of
7 the United States or of eligible products are in-
8 sufficient to fulfill the requirements of the Unit-
9 ed States Government.”.

10 (b) ADDITIONAL WAIVER AUTHORITY.—Section
11 302(b) of the Trade Agreements Act of 1979 (19 U.S.C.
12 2512(b)) is amended—

13 (1) by amending paragraph (1) to read as fol-
14 lows:

15 “(1) waive the prohibition required by sub-
16 section (a)(1) on procurement of products of a for-
17 eign country or instrumentality which has not yet
18 become a party to the Agreement but—

19 “(A) has agreed to apply transparent and
20 competitive procedures to its government pro-
21 curement equivalent to those in the Agreement,
22 and

23 “(B) maintains and enforces effective pro-
24 hibitions on bribery and other corrupt practices

1 in connection with its government procure-
2 ment;” and

3 (2) by adding after paragraph (3) the following:
4 “Before exercising the waiver authority under paragraph
5 (1), the President shall consult with the appropriate pri-
6 vate sector advisory committees established under section
7 135 of the Trade Act of 1974 and with the appropriate
8 committees of the Congress.”.

9 (c) CONFORMING AMENDMENT.—Section 305(g) of
10 the Trade Agreements Act of 1979 (19 U.S.C. 2515(g))
11 is amended—

12 (1) in paragraph (1)—

13 (A) by striking “(B) or (C)” and inserting
14 “(B), (C), (D), or (E)”; and

15 (B) by striking “their discriminatory pro-
16 curement practices” and inserting “the prac-
17 tices regarding government procurement identi-
18 fied under subparagraph (B)(ii), (C)(ii), (D)(ii),
19 or (E)(ii) (as the case may be)”; and

20 (2) in paragraph (3) by striking “discrimination
21 identified pursuant to subsection (d)(2)(B) or (C)”
22 and inserting “the practices regarding government
23 procurement identified under subparagraph (B)(ii),
24 (C)(ii), (D)(ii), or (E)(ii) (as the case may be)”.

1 **SEC. 344. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), the amendments made by this subtitle take effect on
4 the date on which the Agreement on Government Procure-
5 ment referred to in section 101(d)(17) enters into force
6 with respect to the United States.

7 (b) SECTION 342(g).—The amendments made by sec-
8 tion 342(g) take effect on the date on which the WTO
9 Agreement enters into force with respect to the United
10 States.

11 **Subtitle F—Technical Barriers to**
12 **Trade**

13 **SEC. 351. TECHNICAL BARRIERS TO TRADE.**

14 (a) REFERENCES.—All references in this section are
15 to title IV of the Trade Agreements Act of 1979 (19
16 U.S.C. 2531 et seq.) unless otherwise specified.

17 (b) SECTION 401.—Section 401 is amended—

18 (1) by striking “Nothing” and inserting “(b)
19 UNNECESSARY OBSTACLES.—Nothing”; and

20 (2) by inserting after the section heading the
21 following:

22 “(a) NO BAR TO ENGAGING IN STANDARDS ACTIV-
23 ITY.—Nothing in this title may be construed—

24 “(1) to prohibit a Federal agency from engag-
25 ing in activity related to standards-related measures,
26 including any such measure relating to safety, the

1 protection of human, animal, or plant life or health,
2 the environment, or consumers; or

3 “(2) to limit the authority of a Federal agency
4 to determine the level it considers appropriate of
5 safety or of protection of human, animal, or plant
6 life or health, the environment, or consumers.”.

7 (c) SECTION 402.—Section 402(4) is amended—

8 (1) by striking “CERTIFICATION ACCESS” in the
9 paragraph heading and inserting “ACCESS”;

10 (2) by striking “certification system” and in-
11 sserting “conformity assessment procedure”; and

12 (3) by striking “certification under that sys-
13 tem” and inserting “an assessment of conformity
14 and the mark of the system, if any”.

15 (d) SECTION 414.—Section 414(b)(1) is amended—

16 (1) by inserting “(A)” after “relating to”;

17 (2) by striking “certification systems” and in-
18 sserting “technical regulations, conformity assess-
19 ment procedures,”;

20 (3) by striking “such standards, systems” and
21 inserting “such standards, technical regulations,
22 conformity assessment procedures,”; and

23 (4) after “local” by inserting “and (B) the
24 membership and participation of Federal, State, or
25 local government bodies or private bodies in the

1 United States in international and regional stand-
2 ardizing bodies and conformity assessment systems,
3 as well as in bilateral and multilateral arrangements
4 concerning standards-related activities”.

5 (e) DEFINITIONS.—Section 451 is amended—

6 (1) so that paragraph (1) reads as follows:

7 “(1) AGREEMENT.—The term ‘Agreement’
8 means the Agreement on Technical Barriers to
9 Trade referred to in section 101(d)(5) of the Uru-
10 guay Round Agreements Act.”;

11 (2) so that paragraph (2) reads as follows:

12 “(2) CONFORMITY ASSESSMENT PROCEDURE.—
13 The term ‘conformity assessment procedure’ means
14 any procedure used, directly or indirectly, to deter-
15 mine that relevant requirements in technical regula-
16 tions or standards are fulfilled.”;

17 (3) in paragraph (4), by striking “certification
18 system” and inserting “conformity assessment pro-
19 cedure” each place it occurs;

20 (4) so that paragraph (6)(A) reads as follows:

21 “(A) the membership of which is open to
22 representatives, whether public or private, of
23 the United States and at least all Members.”;

1 (5) in paragraph (7), by striking “certification
2 system” and inserting “conformity assessment pro-
3 cedure”;

4 (6) so that paragraph (8) reads as follows:

5 “(8) MEMBER.—The term ‘Member’ means a
6 WTO member as defined in section 2(10) of the
7 Uruguay Round Agreements Act.”;

8 (7) so that paragraph (13) reads as follows:

9 “(13) STANDARD.—The term ‘standard’ means
10 a document approved by a recognized body, that
11 provides, for common and repeated use, rules, guide-
12 lines, or characteristics for products or related pro-
13 cesses and production methods, with which compli-
14 ance is not mandatory. Such term may also include
15 or deal exclusively with terminology, symbols, pack-
16 aging, marking, or labeling requirements as they
17 apply to a product, process, or production method.”;

18 (8) in paragraph (14), by striking “or any cer-
19 tification system” and inserting “, technical regula-
20 tion, or conformity assessment procedure”; and

21 (9) by redesignating paragraph (17) as para-
22 graph (18) and inserting after paragraph (16) the
23 following:

24 “(17) TECHNICAL REGULATION.—The term
25 ‘technical regulation’ means a document which lays

1 down product characteristics or their related proc-
 2 esses and production methods, including the applica-
 3 ble administrative provisions, with which compliance
 4 is mandatory. Such term may also include or deal
 5 exclusively with terminology, symbols, packaging,
 6 marking, or labeling requirements as they apply to
 7 a product, process, or production method.”.

8 (f) REPORTS TO CONGRESS.—Section 453 is amend-
 9 ed by inserting “through 2001” after “succeeding 3-year
 10 period”.

11 (g) EFFECTIVE DATE.—Title IV of the Trade Agree-
 12 ments Act of 1979 (19 U.S.C. 2531 et seq.) is amended
 13 by striking section 454.

14 **SEC. 352. EFFECTIVE DATE.**

15 This subtitle and the amendments made by this sub-
 16 title take effect on the date on which the WTO Agreement
 17 enters into force with respect to the United States.

18 **TITLE IV—AGRICULTURE-**
 19 **RELATED PROVISIONS**
 20 **Subtitle A—Agriculture**

21 **PART I—MARKET ACCESS**

22 **SEC. 401. SECTION 22 AMENDMENTS.**

23 (a) AMENDMENT TO SECTION 22.—

24 (1) GENERALLY.—Subsection (f) of section 22
 25 of the Agricultural Adjustment Act (7 U.S.C.

1 624(f)), reenacted with amendments by the Agricul-
2 tural Marketing Agreement Act of 1937, is amended
3 to read as follows:

4 “(f) No quantitative limitation or fee shall be imposed
5 under this section with respect to any article that is the
6 product of a WTO member (as defined in section 2(10)
7 of the Uruguay Round Agreements Act).”.

8 (2) EFFECTIVE DATE.—The amendment made
9 by paragraph (1) shall take effect on the date of
10 entry into force of the WTO Agreement with respect
11 to the United States, except that with respect to
12 wheat, that amendment shall take effect on the later
13 of such date or September 12, 1995.

14 (b) CONFORMING AMENDMENTS.—

15 (1) SECTION 202 OF THE AGRICULTURAL ACT
16 OF 1956.—Section 202 of the Agricultural Act of
17 1956 (7 U.S.C. 1852) is amended—

18 (A) by striking subsection (a); and

19 (B) in subsection (b), by striking “(b)”.

20 (2) COTTON IMPORT QUOTAS.—Section 103B of
21 the Agricultural Act of 1949 (7 U.S.C. 1444–2) is
22 amended—

23 (A) in subsection (a)(5)(F)(i)—

1 (i) by striking “this section” and in-
2 serting “the Uruguay Round Agreements
3 Act”; and

4 (ii) by striking “limited global”;

5 (B) in subsection (a)(5)(F)(iv), by striking
6 “special quota period has” and inserting “quota
7 period has”;

8 (C) by adding at the end of subsection
9 (a)(5)(F) the following:

10 “(v) PREFERENTIAL TARIFF TREAT-
11 MENT.—The quantity under a special im-
12 port quota shall be considered to be an in-
13 quota quantity for purposes of section
14 213(d) of the Caribbean Basin Economic
15 Recovery Act (19 U.S.C. 2703(d)), section
16 204 of the Andean Trade Preference Act
17 (19 U.S.C. 3203), section 503(d) of the
18 Trade Act of 1974 (19 U.S.C. 2463(d)),
19 and General Note 3(a)(iv) to the HTS.

20 “(vi) DEFINITION.—As used in this
21 subparagraph, the term ‘special import
22 quota’ means a quantity of imports that is
23 not subject to the over-quota tariff rate of
24 a tariff-rate quota.”; and

25 (D) in subsection (n)—

- 1 (i) in the subsection heading, by strik-
2 ing “SPECIAL”;
- 3 (ii) in paragraph (1), by striking “this
4 section” and inserting “the Uruguay
5 Round Agreements Act”;
- 6 (iii) in paragraph (1), by striking
7 “special” each place it appears;
- 8 (iv) by redesignating paragraph
9 (1)(C) as paragraph (1)(D);
- 10 (v) by inserting after subparagraph
11 (B) of paragraph (1) the following:
12 “(C) PREFERENTIAL TARIFF TREAT-
13 MENT.—The quantity under a limited global
14 import quota shall be considered to be an in-
15 quota quantity for purposes of section 213(d) of
16 the Caribbean Basin Economic Recovery Act
17 (19 U.S.C. 2703(d)), section 204 of the Andean
18 Trade Preference Act (19 U.S.C. 3203), section
19 503(d) of the Trade Act of 1974 (19 U.S.C.
20 2463(d)), and General Note 3(a)(iv) to the
21 HTS.”; and
- 22 (vi) in paragraph (1)(D) (as redesign-
23 nated by clause (iv)), by adding at the end
24 the following:

1 “(iii) LIMITED GLOBAL IMPORT
2 QUOTA.—As used in this subsection, the
3 term ‘limited global import quota’ means a
4 quantity of imports that is not subject to
5 the over-quota tariff rate of a tariff-rate
6 quota.”; and

7 (vii) in paragraph (2), by striking
8 “special quota period may” and inserting
9 “quota period may”.

10 **SEC. 402. CHEESE AND CHOCOLATE CRUMB IMPORTS.**

11 (a) REPEAL OF SECTIONS 701 AND 703.—Sections
12 701 and 703 of the Trade Agreements Act of 1979 (93
13 Stat. 268) are hereby repealed.

14 (b) PRESIDENTIAL ACTION.—Section 702(d)(1) (93
15 Stat. 268) of the Trade Agreements Act of 1979 is amend-
16 ed to read as follows:

17 “(1) IN GENERAL.—Not later than 7 days after
18 receiving a report under subsection (c)(3) with re-
19 spect to an article of cheese subject to an in-quota
20 rate of duty (or not later than 3 days after receiving
21 a report under paragraph (2) in any case in which
22 such paragraph applies), the President shall pro-
23 claim the imposition of a fee on the importation of
24 such article from the country involved in such
25 amount (not to exceed the amount of the subsidy de-

1 terminated under subsection (b)(2)(B)) as may be nec-
2 essary to ensure that the duty-paid wholesale price
3 of such article will not be less than the domestic
4 wholesale market price of similar articles produced
5 in the United States, and shall direct the Commis-
6 sioner of Customs to administer and enforce such
7 fee. Any such fee imposed shall be in addition to any
8 customs duty or other fee imposed by law.”.

9 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

10 (1) Section 702 of the Trade Agreements Act
11 of 1979 is amended by striking “of quota cheese”
12 each place it appears and inserting “of cheese sub-
13 ject to an in-quota rate of duty”.

14 (2) Section 702(c)(2) of such Act is amended—

15 (A) by striking “the Special Representative
16 for Trade Negotiations” and inserting “the
17 United States Trade Representative”, and

18 (B) by striking “The Special Representa-
19 tive” and inserting “The United States Trade
20 Representative”.

21 (3) Subsections (c)(3)(B) and (e) of section 702
22 of such Act are each amended by striking “or quan-
23 titative limitation”.

24 (4) Section 702(f) of such Act is amended—

1 (A) by inserting “(as in effect on the day
2 before the effective date of title II of the Uru-
3 guay Round Agreements Act)” after “Tariff
4 Act of 1930”, and

5 (B) by striking “under title I of this Act”
6 and inserting “under title VII of the Tariff Act
7 of 1930”.

8 (5) Section 702(g)(2) of such Act is amended
9 by striking “or quantitative limitations”.

10 (6) Section 702(h) of such Act is amended by
11 adding at the end the following new paragraphs:

12 “(4) CHEESE SUBJECT TO AN IN-QUOTA RATE
13 OF DUTY.—The term ‘cheese subject to an in-quota
14 rate of duty’ means the articles and the quantities
15 of such articles provided for in the Additional U. S.
16 Notes 14 through 23 of chapter 4 of Schedule XX
17 (as defined in section 2(5) of the Uruguay Round
18 Agreements Act).

19 “(5) SECRETARY.—The term ‘Secretary’ means
20 the Secretary of Agriculture.”.

21 **SEC. 403. MEAT IMPORT ACT.**

22 The Meat Import Act of 1979 (19 U.S.C. 2253 note)
23 is repealed.

1 **SEC. 404. ADMINISTRATION OF TARIFF-RATE QUOTAS.**

2 (a) ORDERLY MARKETING.—In implementing the
3 tariff-rate quotas set out in Schedule XX for the entry,
4 or withdrawal from warehouse, for consumption of goods
5 in the United States, the President shall take such action
6 as may be necessary to ensure that imports of agricultural
7 products do not disrupt the orderly marketing of commod-
8 ities in the United States.

9 (b) INADEQUATE SUPPLY.—Where imports of an ag-
10 ricultural product are subject to a tariff-rate quota, and
11 where the President determines and proclaims that the
12 supply of the same or directly competitive or substitutable
13 agricultural product will be inadequate, because of a natu-
14 ral disaster, disease, or major national market disruption,
15 to meet domestic demand at reasonable prices, the Presi-
16 dent may temporarily increase the quantity of imports of
17 the agricultural product that is subject to the in-quota
18 rate of duty established under the tariff-rate quota.

19 (c) MONITORING.—The Secretary of Agriculture shall
20 monitor the domestic supply of agricultural products sub-
21 ject to a tariff-rate quota as the Secretary considers ap-
22 propriate and shall advise the President when the domestic
23 supply of the products and substitutable products com-
24 bined with the estimated imports of the products under
25 the tariff-rate quota may be inadequate to meet domestic
26 demand at reasonable prices.

1 (d) COVERAGE OF TARIFF-RATE QUOTAS.—

2 (1) EXCLUSIONS.—The President may, subject
3 to terms and conditions determined appropriate by
4 the President, provide that the entry, or withdrawal
5 from warehouse, for consumption in the United
6 States of an agricultural product shall not be subject
7 to the over-quota rate of duty established under a
8 tariff-rate quota if the agricultural product—

9 (A) is imported by, or for the account of,
10 any agency of the United States or of any for-
11 eign embassy;

12 (B) is imported as a sample for taking or-
13 ders, for the personal use of the importer, or
14 for the testing of equipment;

15 (C) is a commercial sample or is entered
16 for exhibition, display, or sampling at a trade
17 fair or for research; or

18 (D) is a blended syrup provided for in sub-
19 headings 1702.20.28, 1702.30.28, 1702.40.28,
20 1702.60.28, 1702.90.58, 1806.20.92,
21 1806.20.93, 1806.90.38, 1806.90.40,
22 2101.10.38, 2101.20.38, 2106.90.38, or
23 2106.90.67 of Schedule XX, if entered from a
24 foreign trade zone by a foreign trade zone user
25 whose facilities were in operation on June 1,

1 1990, to the extent that the annual quantity
2 entered into the customs territory from such
3 zone does not contain a quantity of sugar of
4 nondomestic origin greater than the quantity
5 authorized by the Foreign Trade Zones Board
6 for processing in that zone during calendar year
7 1985.

8 (2) RECLASSIFICATION.—Subject to the con-
9 sultation and layover requirements of section 115,
10 the President may proclaim a modification to the
11 coverage of a tariff-rate quota for any agricultural
12 product if the President determines the modification
13 is necessary or appropriate to conform the tariff-rate
14 quota to Schedule XX as a result of a reclassifica-
15 tion of any item by the Secretary of the Treasury.

16 (3) ALLOCATION.—The President may allocate
17 the in-quota quantity of a tariff-rate quota for any
18 agricultural product among supplying countries or
19 customs areas and may modify any allocation as de-
20 termined appropriate by the President.

21 (4) BILATERAL AGREEMENT.—The President
22 may proclaim an increase in the tariff-rate quota for
23 beef if the President determines that an increase is
24 necessary to implement—

1 (A) the March 24, 1994, agreement be-
2 tween the United States and Argentina; or

3 (B) the March 9, 1994, agreement between
4 the United States and Uruguay.

5 (5) CONTINUATION OF SUGAR HEADNOTE.—
6 The President is authorized to proclaim additional
7 United States note 3 to chapter 17 of the HTS, and
8 to proclaim the modifications to the note, as deter-
9 mined appropriate by the President to reflect Sched-
10 ule XX.

11 (e) CONFORMING AMENDMENTS.—

12 (1) SECTION 213 OF THE CARIBBEAN BASIN
13 ECONOMIC RECOVERY ACT.—Section 213(d) of the
14 Caribbean Basin Economic Recovery Act (19 U.S.C.
15 2703(d)) is amended to read as follows:

16 “(d) TARIFF-RATE QUOTAS.—No quantity of an ag-
17 ricultural product subject to a tariff-rate quota that ex-
18 ceeds the in-quota quantity shall be eligible for duty-free
19 treatment under this title.”.

20 (2) SECTION 204 OF THE ANDEAN TRADE PREF-
21 ERENCE ACT.—Section 204 of the Andean Trade
22 Preference Act (19 U.S.C. 3203) is amended by
23 adding at the end the following new subsection:

24 “(g) TARIFF-RATE QUOTAS.—No quantity of an ag-
25 ricultural product subject to a tariff-rate quota that ex-

1 ceeds the in-quota quantity shall be eligible for duty-free
2 treatment under this Act.”.

3 (3) GSP.—Section 503 of the Trade Act of
4 1974 (19 U.S.C. 2463) is amended by adding at the
5 end the following new subsection:

6 “(d) TARIFF-RATE QUOTAS.—No quantity of an ag-
7 ricultural product subject to a tariff-rate quota that ex-
8 ceeds the in-quota quantity shall be eligible for duty-free
9 treatment under this title.”.

10 (4) GENERAL NOTE 3(a) TO THE HTS.—Gen-
11 eral Note 3(a)(iv) to the HTS is amended by adding
12 at the end the following:

13 “(F) No quantity of an agricultural prod-
14 uct that is subject to a tariff-rate quota that ex-
15 ceeds the in-quota quantity shall be eligible for
16 duty-free treatment under this paragraph.”.

17 (5) DUTY DRAWBACK.—

18 (A) GENERALLY.—Section 313 of the Tar-
19 iff Act of 1930 (19 U.S.C. 1313) is amended by
20 adding at the end the following new subsection:

21 “(w) LIMITED APPLICABILITY FOR CERTAIN AGRIC-
22 CULTURAL PRODUCTS.—No drawback shall be available
23 with respect to an agricultural product subject to the over-
24 quota rate of duty established under a tariff-rate quota,
25 except pursuant to subsection (j)(1).”.

1 (B) EFFECTIVE DATE.—The amendment
2 made by subparagraph (A) shall take effect on
3 the earlier of the date of entry into force of the
4 WTO Agreement with respect to the United
5 States or January 1, 1995.

6 (6) RESTRICTIONS ON IMPORTED PEANUTS.—
7 Paragraph (6) of section 358e(f) of the Agricultural
8 Adjustment Act of 1938 (7 U.S.C. 1359a(f)(6)) is
9 amended by inserting after “issues a proclamation”
10 the following: “under section 404(b) of the Uruguay
11 Round Agreements Act expanding the quantity of
12 peanuts subject to the in-quota rate of duty under
13 a tariff-rate quota, or”.

14 **SEC. 405. SPECIAL AGRICULTURAL SAFEGUARD AUTHOR-**
15 **ITY.**

16 (a) DETERMINATION OF TRIGGER LEVELS.—Con-
17 sistent with Article 5 as determined by the President, the
18 President shall cause to be published in the Federal Reg-
19 ister—

20 (1) the list of special safeguard agricultural
21 goods not later than the date of entry into force of
22 the WTO Agreement with respect to the United
23 States; and

24 (2) for each special safeguard agricultural
25 good—

1 (A) the trigger level specified in subpara-
2 graph 1(a) of Article 5, on an annual basis;

3 (B) the trigger price specified in subpara-
4 graph 1(b) of Article 5; and

5 (C) the relevant period.

6 (b) DETERMINATION OF SAFEGUARD.—If the Presi-
7 dent determines with respect to a special safeguard agri-
8 cultural good that it is appropriate to impose—

9 (1) the price-based safeguard in accordance
10 with subparagraph 1(a) of Article 5; or

11 (2) the volume-based safeguard in accordance
12 with subparagraph 1(b) of Article 5,

13 the President shall, consistent with Article 5 as deter-
14 mined by the President, determine the amount of the duty
15 to be imposed, the period such duty shall be in effect, and
16 any other terms and conditions applicable to the duty.

17 (c) IMPOSITION OF SAFEGUARD.—The President
18 shall direct the Secretary of the Treasury to impose a duty
19 on a special safeguard agricultural good entered, or with-
20 drawn from warehouse, for consumption in the United
21 States in accordance with a determination made under
22 subsection (b).

23 (d) NO SIMULTANEOUS SAFEGUARD.—A duty may
24 not be in effect for a special safeguard agricultural good
25 pursuant to this section during any period in which such

1 good is the subject of any action proclaimed pursuant to
2 section 202 or 203 of the Trade Act of 1974 (19 U.S.C.
3 2252 or 2253).

4 (e) EXCLUSION OF NAFTA COUNTRIES.—The Presi-
5 dent may exempt from any duty imposed under this sec-
6 tion any good originating in a NAFTA country (as deter-
7 mined in accordance with section 202 of the North Amer-
8 ican Free Trade Agreement Implementation Act (19
9 U.S.C. 3332)).

10 (f) ADVICE OF SECRETARY OF AGRICULTURE.—The
11 Secretary of Agriculture shall advise the President on the
12 implementation of this section.

13 (g) TERMINATION DATE.—This section shall cease to
14 be effective on the date, as determined by the President,
15 that the special safeguard provisions of Article 5 are no
16 longer in force with respect to the United States.

17 (h) DEFINITIONS.—For purposes of this section—

18 (1) the term “Article 5” means Article 5 of the
19 Agreement on Agriculture described in section
20 101(d)(2);

21 (2) the term “relevant period” means the pe-
22 riod determined by the President to be applicable to
23 a special safeguard agricultural good for purposes of
24 applying this section; and

1 (3) the term “special safeguard agricultural
2 good” means an agricultural good on which an addi-
3 tional duty may be imposed pursuant to the special
4 safeguard provisions of Article 5.

5 **PART II—EXPORTS**

6 **SEC. 411. EXPORT PROGRAMS.**

7 (a) EXPORT ENHANCEMENT PROGRAM.—

8 (1) SHORT TITLE.—This subsection may be
9 cited as the “Export Enhancement Program Amend-
10 ments of 1994”.

11 (2) TITLE HEADING.—Title III of the Agricul-
12 tural Trade Act of 1978 (7 U.S.C. 5651 et seq.) is
13 amended by striking the title heading and inserting
14 the following:

15 **“TITLE III—EXPORT**
16 **ENHANCEMENT PROGRAM”.**

17 (3) GENERAL AUTHORITY.—Subsection (a) of
18 section 301 of such Act (7 U.S.C. 5651(a)) is
19 amended to read as follows:

20 “(a) IN GENERAL.—The Commodity Credit Corpora-
21 tion shall carry out an export enhancement program in
22 accordance with this section to encourage the commercial
23 sale of United States agricultural commodities in world
24 markets at competitive prices. The program shall be car-
25 ried out in a market sensitive manner. Activities under

1 the program shall not be limited to responses to unfair
2 trade practices.”.

3 (4) FUNDING.—Section 301 of such Act (7
4 U.S.C. 5651) is amended—

5 (A) in subsection (e), by striking “1995”
6 and inserting “2001”; and

7 (B) by adding at the end the following:

8 “(g) CONSISTENCY WITH INTERNATIONAL OBLIGA-
9 TIONS.—Notwithstanding any other provision of this sec-
10 tion, the Commodity Credit Corporation shall administer
11 and carry out the program authorized by this section in
12 a manner consistent, as determined by the President, with
13 the obligations undertaken by the United States set forth
14 in the Uruguay Round Agreements.”.

15 (b) DAIRY EXPORT INCENTIVE PROGRAM.—Section
16 153(a) of the Food Security Act of 1985 (15 U.S.C. 713a-
17 14) is amended by striking “1995” and inserting “2001”.

18 (c) EXPORT SALES OF DAIRY PRODUCTS.—Sub-
19 section (a) of section 1163 of the Food Security Act of
20 1985 (Public Law 99-198; 7 U.S.C. 1731 note) is amend-
21 ed to read as follows:

22 “(a) In each fiscal year, the Secretary of Agriculture
23 may sell dairy products for export, at such prices as the
24 Secretary determines appropriate, in a quantity and allo-
25 cated as determined by the Secretary, consistent with the

1 obligations undertaken by the United States set forth in
2 the Uruguay Round Agreements, if the disposition of the
3 commodities will not interfere with the usual marketings
4 of the United States nor disrupt world prices of agricul-
5 tural commodities and patterns of commercial trade.”.

6 (d) MARKET PROMOTION PROGRAM.—(1) Section
7 203(c) of the Agricultural Trade Act of 1978 (7 U.S.C.
8 5623(c)) is amended—

9 (A) by striking paragraph (2);

10 (B) by striking “PARTICIPATION.—” and all
11 that follows through “To” in paragraph (1) and in-
12 serting “PARTICIPATION.—To”;

13 (C) by redesignating subparagraphs (A), (B),
14 and (C) as paragraphs (1), (2), and (3), respectively;
15 and

16 (D) by aligning the margins of paragraphs (1),
17 (2), and (3) (as so redesignated) so as to align with
18 the margin of paragraph (1) of subsection (d).

19 (2) Section 203(f)(2) of such Act (7 U.S.C.
20 5623(f)(2)) is amended—

21 (A) by striking subparagraph (D);

22 (B) by inserting “or” at the end of subpara-
23 graph (C); and

24 (C) by redesignating subparagraph (E) as sub-
25 paragraph (D).

1 (e) FOOD AID.—

2 (1) POLICY.—In light of the Uruguay Round
3 Agreement on Agriculture and the Ministerial Deci-
4 sion on Measures Concerning the Possible Negative
5 Effects of the Reform Program on Least-Developed
6 and Net-Food Importing Developing Countries, the
7 United States reaffirms the commitment of the
8 United States to providing food aid to developing
9 countries.

10 (2) SENSE OF CONGRESS.—It is the sense of
11 Congress that—

12 (A) the President should initiate consulta-
13 tions with other donor nations to consider ap-
14 propriate levels of food aid commitments to
15 meet the legitimate needs of developing coun-
16 tries; and

17 (B) the United States should increase its
18 contribution of bona fide food assistance to de-
19 veloping countries consistent with the Agree-
20 ment on Agriculture.

21 **SEC. 412. OTHER CONFORMING AMENDMENTS.**

22 (a) PUBLIC LAW 98-332.—Section 106 of Public
23 Law 98-332 (98 Stat. 287), is repealed.

24 (b) AGRICULTURE, RURAL DEVELOPMENT, AND RE-
25 LATED AGENCIES APPROPRIATIONS ACT, 1984.—Section

1 625(A) of the Agriculture, Rural Development, and Relat-
2 ed Agencies Appropriations Act, 1984, as given the force
3 of law by section 101(d) of Public Law 98–151 (97 Stat.
4 1853), is repealed.

5 (c) AGRICULTURAL ACT OF 1956.—Section 203 of the
6 Agriculture Act of 1956 (7 U.S.C. 1853) is repealed.

7 **PART III—OTHER PROVISIONS**

8 **SEC. 421. AUTHORITY FOR CERTAIN ACTIONS UNDER ARTI-** 9 **CLE XXVIII.**

10 (a) IN GENERAL.—In the application of section
11 125(c) of the Trade Act of 1974 (19 U.S.C. 2135) with
12 respect to any item provided for in subheadings
13 2401.10.60, 2401.20.30, 2401.20.80, 2401.30.30,
14 2401.30.60, 2401.30.90, 2403.10.00, 2403.91.40, or
15 2403.99.00 of the HTS, “350” shall be substituted for
16 “20” where it appears in such section.

17 (b) EFFECTIVE DATE.—This section shall take effect
18 on the date of the enactment of this Act.

19 **SEC. 422. TOBACCO IMPORTS.**

20 (a) DOMESTIC MARKETING ASSESSMENT.—Section
21 320C of the Agricultural Adjustment Act of 1938 (7
22 U.S.C. 1314i) is amended by adding at the end the follow-
23 ing new subsection:

24 “(g) EFFECTIVE DATE.—This section shall be effec-
25 tive only for calendar year 1994.”.

1 (b) BUDGET DEFICIT ASSESSMENT.—

2 (1) IMPORTER ASSESSMENTS.—Section 106(g)
3 of the Agricultural Act of 1949 (7 U.S.C. 1445(g))
4 is amended—

5 (A) by striking paragraph (1) and insert-
6 ing the following new paragraph:

7 “(1) Effective only for each of the 1994
8 through 1998 crops of tobacco for which price sup-
9 port is made available under this Act, each producer
10 and purchaser of such tobacco, and each importer of
11 the same kind of tobacco, shall remit to the Com-
12 modity Credit Corporation a nonrefundable market-
13 ing assessment in an amount equal to—

14 “(A) in the case of a producer or pur-
15 chaser of domestic tobacco, .5 percent of the
16 national price support level for each such crop;
17 and

18 “(B) in the case of an importer of tobacco,
19 1 percent of the national support price for the
20 same kind of tobacco;
21 as provided for in this section.”; and

22 (B) in paragraph (2), by striking “assess-
23 ments and purchaser” and inserting “, pur-
24 chaser, and importer”.

1 (2) CONFORMING AMENDMENT.—Section 106
2 of such Act (7 U.S.C. 1445) is amended by striking
3 subsection (h).

4 (c) WAIVER AUTHORITY.—The President may waive
5 the application to imported tobacco of section 106(g),
6 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C.
7 1445(g), 1445–1, or 1445–2) or the amendment made in
8 subsection (c) of section 1106 of the Omnibus Budget
9 Reconciliation Act of 1993 (Public Law 103–66; 107 Stat.
10 323) if the President determines that the waiver is nec-
11 essary or appropriate pursuant to an international agree-
12 ment entered into by the United States.

13 (d) DUTY DRAWBACK.—Section 313(w) of the Tariff
14 Act of 1930 (19 U.S.C. 1313) (as added by section
15 404(d)(5)) is further amended—

16 (1) by striking “PRODUCTS.—No” and insert-
17 ing “PRODUCTS.—

18 “(1) IN GENERAL.—No”; and

19 (2) by adding at the end the following new
20 paragraph:

21 “(2) APPLICATION TO TOBACCO.—Notwith-
22 standing paragraph (1), drawback shall also be
23 available pursuant to subsection (a) with respect to
24 any tobacco subject to the over-quota rate of duty
25 established under a tariff-rate quota.”.

1 (e) EFFECTIVE DATE.—This section and the amend-
2 ments made by this section shall be effective beginning
3 on the effective date of the Presidential proclamation, au-
4 thorized under section 421, establishing a tariff-rate quota
5 pursuant to Article XXVIII of the GATT 1947 or the
6 GATT 1994 with respect to tobacco.

7 **SEC. 423. TOBACCO PROCLAMATION AUTHORITY.**

8 (a) IN GENERAL.—The President, after consultation
9 with the Committee on Ways and Means of the House of
10 Representatives and with the Committee on Finance of the
11 Senate, may proclaim the reduction or elimination of any
12 duty with respect to cigar binder and filler tobacco, wrap-
13 per tobacco, or oriental tobacco set forth in Schedule XX.

14 (b) EFFECTIVE DATE.—This section shall take effect
15 on the date of the enactment of this Act.

16 **SEC. 424. REPORT TO CONGRESS ON ACCESS TO CANADIAN**
17 **DAIRY AND POULTRY MARKETS.**

18 The President, not later than 6 months after the date
19 of entry into force of the WTO Agreement with respect
20 to the United States, shall submit a report to the Congress
21 on the extent to which Canada is complying with its obli-
22 gations under the Uruguay Round Agreements with re-
23 spect to dairy and poultry products and with its related
24 obligations under the North American Free Trade Agree-
25 ment.

1 **SEC. 425. STUDY OF MILK MARKETING ORDER SYSTEM.**

2 The Secretary of Agriculture shall conduct a study
3 to determine the effects of the Uruguay Round Agree-
4 ments on the Federal milk marketing order system. Not
5 later than 6 months after the date of entry into force of
6 the WTO Agreement with respect to the United States,
7 the Secretary of Agriculture shall report to the Congress
8 on the results of the study.

9 **SEC. 426. ADDITIONAL PROGRAM FUNDING.**

10 (a) USE OF ADDITIONAL FUNDS.—Consistent, as de-
11 termined by the President, with the obligations under-
12 taken by the United States set forth in the Uruguay
13 Round Agreements, the Commodity Credit Corporation
14 shall use, in addition to any other funds appropriated or
15 made available for such purposes, any funds made avail-
16 able under subsection (b) for authorized export promotion,
17 foreign market development, export credit financing, and
18 promoting the development, commercialization, and mar-
19 keting of products resulting from alternative uses of agri-
20 cultural commodities.

21 (b) AMOUNT OF ADDITIONAL FUNDS.—Amounts
22 shall be credited to the Commodity Credit Corporation in
23 fiscal year 1995 equal to the lesser of the dollar amount
24 of—

25 (1) the fiscal year 1995 Pay-As-You-Go sav-
26 ings; and

1 (2) the 5-year Pay-As-You-Go savings;
2 under section 252 of the Balanced Budget and Emergency
3 Deficit Control Act of 1985, resulting from the enactment
4 of the Federal Crop Insurance Reform Act of 1994.

5 (c) EFFECTIVE DATE.—This section shall take effect
6 on the date of the enactment of this section.

7 **Subtitle B—Sanitary and**
8 **Phytopsanitary Measures**

9 **SEC. 431. SANITARY AND PHYTOSANITARY MEASURES.**

10 (a) TRADE AGREEMENTS ACT OF 1979.—Section
11 414 of the Trade Agreements Act of 1979 (19 U.S.C.
12 2544) is amended by adding at the end the following:

13 “(c) SANITARY AND PHYTOSANITARY MEASURES.—

14 “(1) PUBLIC INFORMATION.—The standards in-
15 formation center shall, in addition to the functions
16 specified under subsection (b), make available to the
17 public relevant documents, at such reasonable fees
18 as the Secretary of Commerce may prescribe, and
19 information regarding—

20 “(A) any sanitary or phytopsanitary meas-
21 ure of general application, including any inspec-
22 tion procedure or approval procedure proposed,
23 adopted, or maintained by a Federal agency or
24 agency of a State or local government;

1 “(B) the procedures of a Federal agency or
2 an agency of a State or local government for
3 risk assessment and factors the agency consid-
4 ers in conducting the assessment;

5 “(C) the determination of the levels of pro-
6 tection that a Federal agency or an agency of
7 a State or local government considers appro-
8 priate; and

9 “(D) the membership and participation of
10 the Federal Government and State and local
11 governments in international and regional sani-
12 tary and phytosanitary organizations and sys-
13 tems, and in bilateral and multilateral arrange-
14 ments regarding sanitary and phytosanitary
15 measures, and the provisions of those systems
16 and arrangements.

17 “(2) DEFINITIONS.—The definitions in section
18 463 apply for purposes of this subsection.”.

19 (b) RAILWAY CAR INSPECTION.—Subsection (a) of
20 the Act of January 31, 1942 (56 Stat. 40, chapter 31;
21 7 U.S.C. 149), is amended by striking “from Mexico”.

22 (c) FEDERAL PLANT PEST ACT.—The Federal Plant
23 Pest Act (7 U.S.C. 150aa et seq.) is amended—

24 (1) so that section 103 (7 U.S.C. 150bb) reads
25 as follows:

1 **“SEC. 103. MOVEMENT OF PESTS PROHIBITED.**

2 “(a) IN GENERAL.—No person shall import or enter
3 any plant pest into the United States, or move any plant
4 pest interstate, or accept delivery of any plant pest moving
5 from any foreign country into or through the United
6 States, or interstate, unless the movement is made in ac-
7 cordance with such regulations as the Secretary may pro-
8 mulgate to prevent the dissemination into the United
9 States, or interstate, of plant pests.

10 “(b) REGULATIONS.—The regulations promulgated
11 by the Secretary to implement subsection (a) may include
12 regulations requiring that a plant pest moving into or
13 through the United States, or interstate—

14 “(1) be accompanied by a permit issued by the
15 Secretary prior to the movement of the plant pest;
16 or

17 “(2) be accompanied by a certificate of inspec-
18 tion issued, in a manner and form required by the
19 Secretary, by appropriate officials of the country or
20 State from which the plant pest is to be moved.”;
21 and

22 (2) in section 104 (7 U.S.C. 150cc)—

23 (A) so that subsection (a) reads as follows:

24 “(a) Any letter, parcel, box, or other package contain-
25 ing any plant pest, whether sealed as letter-rate postal
26 matter or not, is nonmailable, and shall not knowingly be

1 conveyed in the mail or delivered from any post office or
2 by any mail carrier, unless it is mailed in conformance
3 with such regulations as the Secretary may promulgate
4 to prevent the dissemination into the United States, or
5 interstate, of plant pests.”;

6 (B) by striking subsection (b); and

7 (C) by redesignating subsections (c) and
8 (d) as subsections (b) and (c), respectively.

9 (d) PLANT QUARANTINE ACT.—The Act of August
10 20, 1912 (37 Stat. 315, chapter 308; 7 U.S.C. 151 et seq.)
11 (commonly known as the “Plant Quarantine Act”) is
12 amended—

13 (1) so that the first section (7 U.S.C. 151)
14 reads as follows:

15 **“SECTION 1. IMPORTATION OF NURSERY STOCK.**

16 “(a) IN GENERAL.—No person shall—

17 “(1) import or enter into the United States any
18 nursery stock; or

19 “(2) accept delivery of any nursery stock mov-
20 ing from any foreign country into or through the
21 United States;

22 unless the movement is made in accordance with such reg-
23 ulations as the Secretary of Agriculture may promulgate
24 to prevent dissemination into the United States of plant
25 pests, plant diseases, or insect pests.

1 “(b) REGULATIONS.—The regulations promulgated
2 by the Secretary of Agriculture to implement subsection
3 (a) may include regulations requiring that nursery stock
4 moving into or though the United States—

5 “(1) be accompanied by a permit issued by the
6 Secretary of Agriculture prior to the movement of
7 the nursery stock;

8 “(2) be accompanied by a certificate of inspec-
9 tion issued, in a manner and form required by the
10 Secretary of Agriculture, by appropriate officials of
11 the country or State from which the nursery stock
12 is to be moved;

13 “(3) be grown under postentry quarantine con-
14 ditions by or under the supervision of the Secretary
15 of Agriculture for the purposes of determining
16 whether the nursery stock may be infested with
17 plant pests or insect pests, or infected with plant
18 diseases, not discernible by port-of-entry inspection;
19 and

20 “(4) if the nursery stock is found to be infested
21 with plant pests or insect pests or infected with
22 plant diseases, be subject to remedial measures the
23 Secretary of Agriculture determines to be necessary
24 to prevent the spread of plant pests, insect pests, or
25 plant diseases.”; and

1 (2) so that the last sentence of section 2 (7
2 U.S.C. 156) reads as follows: “This section does not
3 apply to nursery stock that is imported or entered
4 from a country or a region of a country that the
5 Secretary of Agriculture designates, pursuant to pro-
6 cedures set forth in such regulations as the Sec-
7 retary may promulgate, as exempt from the require-
8 ments of this section.”.

9 (e) HONEYBEE IMPORTATION.—The first section of
10 the Act of August 31, 1922 (42 Stat. 833, chapter 301;
11 7 U.S.C. 281) (commonly known as the “Honeybee Act”),
12 is amended to read as follows:

13 **“SECTION 1. HONEYBEE IMPORTATION.**

14 “(a) IN GENERAL.—The Secretary of Agriculture is
15 authorized to prohibit or restrict the importation or entry
16 of honeybees and honeybee semen into or through the
17 United States in order to prevent the introduction and
18 spread of diseases and parasites harmful to honeybees, the
19 introduction of genetically undesirable germ plasm of hon-
20 eybees, or the introduction and spread of undesirable spe-
21 cies or subspecies of honeybees and the semen of honey-
22 bees.

23 “(b) REGULATIONS.—The Secretary of Agriculture
24 and the Secretary of the Treasury are each authorized to

1 prescribe such regulations as the respective Secretary de-
2 termines necessary to carry out this section.

3 “(c) ENFORCEMENT.—Honeybees or honeybee semen
4 offered for importation into, intercepted entering, or hav-
5 ing entered the United States, other than in accordance
6 with regulations promulgated by the Secretary of Agri-
7 culture and the Secretary of the Treasury, shall be de-
8 stroyed or immediately exported.

9 “(d) DEFINITION.—As used in this Act, the term
10 ‘honeybee’ means all life stages and the germ plasm of
11 honeybees of the genus *Apis*, except honeybee semen.”

12 (f) FEDERAL NOXIOUS WEED ACT OF 1974.—Sec-
13 tion 4 of the Federal Noxious Weed Act of 1974 (7 U.S.C.
14 2803) is amended so that subsections (a) through (b) read
15 as follows:

16 “(a) No person shall import or enter any noxious
17 weed identified in a regulation promulgated by the Sec-
18 retary into or through the United States or move any nox-
19 ious weed interstate, unless the movement is in accordance
20 with such conditions as the Secretary may prescribe by
21 regulation under this Act to prevent the dissemination into
22 the United States, or interstate, of such noxious weeds.

23 “(b) The regulations prescribed by the Secretary to
24 implement subsection (a) may include regulations requir-
25 ing that any noxious weed imported or entered into the

1 United States or moving interstate be accompanied by a
2 permit issued by the Secretary prior to the movement of
3 the noxious weed.”.

4 (g) TARIFF ACT OF 1930.—Section 306(b) of the
5 Tariff Act of 1930 (19 U.S.C. 1306(b)) is amended by
6 inserting before the period at the end the following: “, or
7 is, and is likely to remain, a region of low prevalence of
8 rinderpest and foot-and-mouth disease”.

9 (h) IMPORTATION OF ANIMALS.—Section 6 of the Act
10 of August 30, 1890 (26 Stat. 416, chapter 839; 21 U.S.C.
11 104), is amended to read as follows:

12 **“SEC. 6. IMPORTATION OF ANIMALS.**

13 “(a) IN GENERAL.—The Secretary of Agriculture
14 may by regulation prohibit or restrict the importation or
15 entry of any cattle, sheep, or other ruminants, or swine,
16 that are diseased or infected with any disease, or that have
17 been exposed to an infection, into or through the United
18 States to prevent the dissemination into the United States
19 of a disease.

20 “(b) PENALTIES.—

21 “(1) CRIMINAL.—Any person who knowingly
22 violates any regulation promulgated by the Secretary
23 pursuant to this section, or any provision of sections
24 7 through 10 or any regulation promulgated by the
25 Secretary pursuant to such sections, shall be fined

1 under title 18, United States Code, or imprisoned
2 not more than 1 year, or both.

3 “(2) CIVIL.—Any person who violates any such
4 provision or any such regulation may be assessed a
5 civil penalty by the Secretary of Agriculture not ex-
6 ceeding \$1,000. The Secretary may issue an order
7 assessing the civil penalty only after notice and an
8 opportunity for an agency hearing on the record.
9 The order shall be treated as a final order
10 reviewable under chapter 158 of title 28, United
11 States Code. The validity of the order may not be
12 reviewed in an action to collect such civil penalty.”.

13 (i) INSPECTION OF ANIMALS.—Section 10 of the Act
14 of August 30, 1890 (26 Stat. 417, chapter 839; 21 U.S.C.
15 105), is amended—

16 (1) in subsection (a)—

17 (A) by striking “(a) IN GENERAL.—Except
18 as provided in subsection (b), the” and insert-
19 ing “The”;

20 (B) in the first sentence, by striking “shall
21 cause careful inspection to be made by a suit-
22 able officer of all” and inserting “may cause
23 careful inspection of any”; and

24 (C) in the third sentence, by striking “they
25 shall not be allowed to be placed” and inserting

1 “the Secretary may prohibit or restrict their
2 placement”; and

3 (2) by striking subsection (b).

4 (j) INTERNATIONAL ANIMAL QUARANTINE STA-
5 TION.—The 6th sentence in the first section of Public Law
6 91–239 (21 U.S.C. 135) is amended—

7 (1) by striking “North American”; and

8 (2) by striking “within the United States”.

9 (k) POULTRY PRODUCTS INSPECTION ACT.—Section
10 17(d) of the Poultry Products Inspection Act (21 U.S.C.
11 466) is amended—

12 (1) by amending paragraph (1) to read as fol-
13 lows:

14 “(1) Notwithstanding any other provision of law, all
15 poultry, or parts or products of poultry, capable of use
16 as human food offered for importation into the United
17 States shall—

18 “(A) be subject to inspection, sanitary, quality,
19 species verification, and residue standards that
20 achieve a level of sanitary protection equivalent to
21 that achieved under United States standards; and

22 “(B) have been processed in facilities and under
23 conditions that achieve a level of sanitary protection
24 equivalent to that achieved under United States
25 standards.”; and

1 (2) in paragraph (2)—

2 (A) by amending subparagraph (A) to read
3 as follows:

4 “(A) The Secretary may treat as equivalent to a
5 United States standard a standard of an exporting coun-
6 try described in paragraph (1) if the exporting country
7 provides the Secretary with scientific evidence or other in-
8 formation, in accordance with risk assessment methodolo-
9 gies determined appropriate by the Secretary, to dem-
10 onstrate that the standard of the exporting country
11 achieves the level of sanitary protection achieved under the
12 United States standard. For the purposes of this sub-
13 section, the term ‘sanitary protection’ means protection to
14 safeguard public health.”;

15 (B) by striking subparagraph (B); and

16 (C) by redesignating subparagraph (C) as
17 subparagraph (B).

18 (l) FEDERAL MEAT INSPECTION ACT.—Section 20(e)
19 of the Federal Meat Inspection Act (21 U.S.C. 620(e))
20 is amended—

21 (1) so that subparagraphs (A) through (B) of
22 paragraph (1) read as follows:

23 “(A) A certification by the Secretary that for-
24 eign plants exporting carcasses or meat or meat
25 products referred to in subsection (a) have complied

1 with requirements that achieve a level of sanitary
2 protection equivalent to that achieved under United
3 States requirements with regard to all inspection,
4 building construction standards, and all other provi-
5 sions of this Act and regulations issued under this
6 Act.

7 “(B) The Secretary may treat as equivalent to
8 a United States requirement a requirement de-
9 scribed in subparagraph (A) if the exporting country
10 provides the Secretary with scientific evidence or
11 other information, in accordance with risk assess-
12 ment methodologies determined appropriate by the
13 Secretary, to demonstrate that the requirement
14 achieves the level of sanitary protection achieved
15 under the United States requirement. For the pur-
16 poses of this subsection, the term ‘sanitary protec-
17 tion’ means protection to safeguard public health.”;

18 (2) by striking paragraph (2); and

19 (3) by redesignating paragraphs (3) through
20 (7) as paragraphs (2) through (6), respectively.

21 **SEC. 432. INTERNATIONAL STANDARD-SETTING ACTIVITIES.**

22 Title IV of the Trade Agreements Act of 1979 (19
23 U.S.C. 2531 et seq.) is amended by adding at the end
24 the following new subtitle:

1 **“Subtitle F—International**
2 **Standard-Setting Activities**

3 **“SEC. 491. NOTICE OF UNITED STATES PARTICIPATION IN**
4 **INTERNATIONAL STANDARD-SETTING ACTIVI-**
5 **TIES.**

6 “(a) **IN GENERAL.**—The President shall designate an
7 agency to be responsible for informing the public of the
8 sanitary and phytosanitary standard-setting activities of
9 each international standard-setting organization.

10 “(b) **NOTIFICATION.**—Not later than June 1 of each
11 year, the agency designated under subsection (a) with re-
12 spect to each international standard-setting organization
13 shall publish notice in the Federal Register of the informa-
14 tion specified in subsection (c) with respect to that organi-
15 zation. The notice shall cover the period ending on June
16 1 of the year in which the notice is published, and begin-
17 ning on the date of the preceding notice under this sub-
18 section, except that the first such notice shall cover the
19 1-year period ending on the date of the notice.

20 “(c) **REQUIRED INFORMATION.**—The information to
21 be provided in the notice under subsection (b) is—

22 “(1) the sanitary or phytosanitary standards
23 under consideration or planned for consideration by
24 that organization;

1 “(2) for each sanitary or phytosanitary stand-
2 ard specified in paragraph (1)—

3 “(A) a description of the consideration or
4 planned consideration of the standard;

5 “(B) whether the United States is partici-
6 pating or plans to participate in the consider-
7 ation of the standard;

8 “(C) the agenda for the United States par-
9 ticipation, if any; and

10 “(D) the agency responsible for represent-
11 ing the United States with respect to the stand-
12 ard.

13 “(d) PUBLIC COMMENT.—The agency specified in
14 subsection (c)(2)(D) shall provide an opportunity for pub-
15 lic comment with respect to the standards for which the
16 agency is responsible and shall take the comments into
17 account in participating in the consideration of the stand-
18 ards and in proposing matters to be considered by the or-
19 ganization.

20 **“SEC. 492. EQUIVALENCE DETERMINATIONS.**

21 “(a) IN GENERAL.—An agency may not determine
22 that a sanitary or phytosanitary measure of a foreign
23 country is equivalent to a sanitary or phytosanitary meas-
24 ure established under the authority of Federal law unless
25 the agency determines that the sanitary or phytosanitary

1 measure of the foreign country provides at least the same
2 level of sanitary or phytosanitary protection as the com-
3 parable sanitary or phytosanitary measure established
4 under the authority of Federal law.

5 “(b) FDA DETERMINATION.—If the Commissioner
6 proposes to issue a determination of the equivalency of a
7 sanitary or phytosanitary measure of a foreign country to
8 a measure that is required to be promulgated as a rule
9 under the Federal Food, Drug, and Cosmetic Act (21
10 U.S.C. 301 et seq.) or other statute administered by the
11 Food and Drug Administration, the Commissioner shall
12 issue a proposed regulation to incorporate such determina-
13 tion and shall include in the notice of proposed rulemaking
14 the basis for the determination that the sanitary or
15 phytosanitary measure of a foreign country provides at
16 least the same level of sanitary or phytosanitary protection
17 as the comparable Federal sanitary or phytosanitary
18 measure. The Commissioner shall provide opportunity for
19 interested persons to comment on the proposed regulation.
20 The Commissioner shall not issue a final regulation based
21 on the proposal without taking into account the comments
22 received.

23 “(c) NOTICE.—If the Commissioner proposes to issue
24 a determination of the equivalency of a sanitary or
25 phytosanitary measure of a foreign country to a sanitary

1 or phytosanitary measure of the Food and Drug Adminis-
2 tration that is not required to be promulgated as a rule
3 under the Federal Food, Drug, and Cosmetic Act or other
4 statute administered by the Food and Drug Administra-
5 tion, the Commissioner shall publish a notice in the Fed-
6 eral Register that identifies the basis for the determina-
7 tion that the measure provides at least the same level of
8 sanitary or phytosanitary protection as the comparable
9 Federal sanitary or phytosanitary measure. The Commis-
10 sioner shall provide opportunity for interested persons to
11 comment on the notice. The Commissioner shall not issue
12 a final determination on the issue of equivalency without
13 taking into account the comments received.

14 **“SEC. 493. DEFINITIONS.**

15 “(a) IN GENERAL.—As used in this subtitle:

16 “(1) AGENCY.—The term ‘agency’ means a
17 Federal department or agency (or combination of
18 Federal departments or agencies).

19 “(2) COMMISSIONER.—The term ‘Commis-
20 sioner’ means the Commissioner of Food and Drugs.

21 “(3) INTERNATIONAL STANDARD-SETTING OR-
22 GANIZATION.—The term ‘international standard-set-
23 ting organization’ means an organization consisting
24 of representatives of 2 or more countries, the pur-

1 pose of which is to negotiate, develop, promulgate, or
2 amend an international standard.

3 “(4) SANITARY OR PHYTOSANITARY STAND-
4 ARD.—The term ‘sanitary or phytosanitary stand-
5 ard’ means a standard intended to form a basis for
6 a sanitary or phytosanitary measure.

7 “(5) INTERNATIONAL STANDARD.—The term
8 ‘international standard’ means a standard, guideline,
9 or recommendation—

10 “(A) regarding food safety, adopted by the
11 Codex Alimentarius Commission, including a
12 standard, guideline, or recommendation regard-
13 ing decomposition elaborated by the Codex
14 Committee on Fish and Fishery Products, food
15 additives, contaminants, hygienic practice, and
16 methods of analysis and sampling;

17 “(B) regarding animal health and
18 zoonoses, developed under the auspices of the
19 International Office of Epizootics;

20 “(C) regarding plant health, developed
21 under the auspices of the Secretariat of the
22 International Plant Protection Convention in
23 cooperation with the North American Plant
24 Protection Organization; or

1 “(D) established by or developed under any
2 other international organization agreed to by
3 the NAFTA countries (as defined in section
4 2(4) of the North American Free Trade Agree-
5 ment Implementation Act) or by the WTO
6 members (as defined in section 2(10) of the
7 Uruguay Round Agreements Act).

8 “(b) OTHER DEFINITIONS.—The definitions set forth
9 in section 463 apply for purposes of this subtitle except
10 that in applying paragraph (7) of section 463 with respect
11 to a sanitary or phytosanitary measure of a foreign coun-
12 try, any reference in such paragraph to the United States
13 shall be deemed to be a reference to that foreign coun-
14 try.”.

15 **Subtitle C—Standards**

16 **SEC. 441. THE FEDERAL SEED ACT.**

17 The Federal Seed Act (7 U.S.C. 1551 et seq.) is
18 amended—

19 (1) in section 301(a) (7 U.S.C. 1581(a))—

20 (A) by striking “(a)”;

21 (B) in paragraph (1), by striking “, or is
22 required to be stained and is not so stained,
23 under the terms of this title,”;

24 (C) by striking paragraph (3); and

1 (D) by redesignating paragraphs (4) and
2 (5) as paragraphs (3) and (4), respectively;
3 (2) in section 302 (7 U.S.C. 1582)—

4 (A) in subsection (a), by striking “stain-
5 ing,” both places it appears; and

6 (B) by striking subsection (e);

7 (3) by striking section 303 (7 U.S.C. 1585) and
8 inserting the following new section:

9 **“SEC. 303. CERTAIN SEEDS NOT ADAPTED FOR GENERAL**
10 **AGRICULTURAL USE.**

11 “Whenever the Secretary of Agriculture, after a pub-
12 lic hearing, determines that seed of alfalfa or red clover
13 from any foreign country is not adapted for general agri-
14 cultural use in the United States, the Secretary shall pub-
15 lish the determination and the reasons for the determina-
16 tion.”; and

17 (4) in section 304 (7 U.S.C. 1586)—

18 (A) in subsection (a)—

19 (i) by inserting “or” at the end of
20 paragraph (2);

21 (ii) by striking the semicolon at the
22 end of paragraph (3) and inserting a pe-
23 riod; and

24 (iii) by striking paragraphs (4)
25 through (7);

1 (B) by striking subsection (b); and
2 (C) by redesignating subsection (c) as sub-
3 section (b).

4 **Subtitle D—General Effective Date**

5 **SEC. 451. GENERAL EFFECTIVE DATE.**

6 Except as otherwise provided in this title, this title,
7 and the amendments made by this title, shall take effect
8 on the date of entry into force of the WTO Agreement
9 with respect to the United States.

10 **TITLE V—INTELLECTUAL** 11 **PROPERTY**

12 **SEC. 501. DEFINITION.**

13 For purposes of this title—

14 (1) the term “WTO Agreement” has the mean-
15 ing given that term in section 2(9) of the Uruguay
16 Round Agreements Act; and

17 (2) the term “WTO member country” has the
18 meaning given that term in section 2(10) of the
19 Uruguay Round Agreements Act.

20 **Subtitle A—Copyright Provisions**

21 **SEC. 511. RENTAL RIGHTS IN COMPUTER PROGRAMS.**

22 Section 804(c) of the Computer Software Rental
23 Amendments Act of 1990 (17 U.S.C. 109 note; 104 Stat.
24 5136) is amended by striking the first sentence.

1 **SEC. 512. CIVIL PENALTIES FOR UNAUTHORIZED FIXATION**
2 **OF AND TRAFFICKING IN SOUND RECORD-**
3 **INGS AND MUSIC VIDEOS OF LIVE MUSICAL**
4 **PERFORMANCES.**

5 (a) IN GENERAL.—Title 17, United States Code, is
6 amended by adding at the end the following new chapter:

7 **“CHAPTER 11—SOUND RECORDINGS AND MUSIC**
8 **VIDEOS**

“Sec.

“1101. Unauthorized fixation and trafficking in sound recordings and music videos.

9 **“§ 1101. Unauthorized fixation and trafficking in**
10 **sound recordings and music videos**

11 “(a) UNAUTHORIZED ACTS.—Anyone who, without
12 the consent of the performer or performers involved—

13 “(1) fixes the sounds or sounds and images of
14 a live musical performance in a copy or phonorecord,
15 or reproduces copies or phonorecords of such a per-
16 formance from an unauthorized fixation,

17 “(2) transmits or otherwise communicates to
18 the public the sounds or sounds and images of a live
19 musical performance, or

20 “(3) distributes or offers to distribute, sells or
21 offers to sell, rents or offers to rent, or traffics in
22 any copy or phonorecord fixed as described in para-

1 graph (1), regardless of whether the fixations oc-
2 curred in the United States,
3 shall be subject to the remedies provided in sections 502
4 through 505, to the same extent as an infringer of copy-
5 right.

6 “(b) DEFINITION.—As used in this section, the term
7 ‘traffic in’ means transport, transfer, or otherwise dispose
8 of, to another, as consideration for anything of value, or
9 make or obtain control of with intent to transport, trans-
10 fer, or dispose of.

11 “(c) APPLICABILITY.—This section shall apply to any
12 act or acts that occur on or after the date of the enactment
13 of the Uruguay Round Agreements Act.

14 “(d) STATE LAW NOT PREEMPTED.—Nothing in this
15 section may be construed to annul or limit any rights or
16 remedies under the common law or statutes of any
17 State.”.

18 (b) CONFORMING AMENDMENT.—The table of chap-
19 ters for title 17, United States Code, is amended by add-
20 ing at the end the following:

“11. Sound Recordings and Music Videos 1101”.

1 **SEC. 513. CRIMINAL PENALTIES FOR UNAUTHORIZED FIXA-**
2 **TION OF AND TRAFFICKING IN SOUND RE-**
3 **CORDINGS AND MUSIC VIDEOS OR LIVE MU-**
4 **SICAL PERFORMANCES.**

5 (a) IN GENERAL.—Chapter 113 of title 18, United
6 States Code, is amended by inserting after section 2319
7 the following:

8 **“§ 2319A. Unauthorized fixation of and trafficking in**
9 **sound recordings and music videos of**
10 **live musical performances**

11 “(a) OFFENSE.—Whoever, without the consent of the
12 performer or performers involved, knowingly and for pur-
13 poses of commercial advantage or private financial gain—

14 “(1) fixes the sounds or sounds and images of
15 a live musical performance in a copy or phonorecord,
16 or reproduces copies or phonorecords of such a per-
17 formance from an unauthorized fixation;

18 “(2) transmits or otherwise communicates to
19 the public the sounds or sounds and images of a live
20 musical performance; or

21 “(3) distributes or offers to distribute, sells or
22 offers to sell, rents or offers to rent, or traffics in
23 any copy or phonorecord fixed as described in para-
24 graph (1), regardless of whether the fixations oc-
25 curred in the United States;

1 shall be imprisoned for not more than 5 years or fined
2 in the amount set forth in this title, or both, or if the
3 offense is a second or subsequent offense, shall be impris-
4 oned for not more than 10 years or fined in the amount
5 set forth in this title, or both.

6 “(b) FORFEITURE AND DESTRUCTION.—When a per-
7 son is convicted of a violation of subsection (a), the court
8 shall order the forfeiture and destruction of any copies or
9 phonorecords created in violation thereof, as well as any
10 plates, molds, matrices, masters, tapes, and film negatives
11 by means of which such copies or phonorecords may be
12 made. The court may also, in its discretion, order the for-
13 feiture and destruction of any other equipment by means
14 of which such copies or phonorecords may be reproduced,
15 taking into account the nature, scope, and proportionality
16 of the use of the equipment in the offense.

17 “(c) SEIZURE AND FORFEITURE.—If copies or
18 phonorecords of sounds or sounds and images of a live
19 musical performance are fixed outside of the United States
20 without the consent of the performer or performers in-
21 volved, such copies or phonorecords are subject to seizure
22 and forfeiture in the United States in the same manner
23 as property imported in violation of the customs laws. The
24 Secretary of the Treasury shall, not later than 60 days
25 after the date of the enactment of the Uruguay Round

1 Agreements Act, issue regulations to carry out this sub-
2 section, including regulations by which any performer
3 may, upon payment of a specified fee, be entitled to notifi-
4 cation by the United States Customs Service of the impor-
5 tation of copies or phonorecords that appear to consist of
6 unauthorized fixations of the sounds or sounds and images
7 of a live musical performance.

8 “(d) DEFINITIONS.—As used in this section—

9 “(1) the terms ‘copy’, ‘fixed’, ‘musical work’,
10 ‘phonorecord’, ‘reproduce’, ‘sound recordings’, and
11 ‘transmit’ mean those terms within the meaning of
12 title 17; and

13 “(2) the term ‘traffic in’ means transport,
14 transfer, or otherwise dispose of, to another, as con-
15 sideration for anything of value, or make or obtain
16 control of with intent to transport, transfer, or dis-
17 pose of.

18 “(e) APPLICABILITY.—This section shall apply to any
19 Act or Acts that occur on or after the date of the enact-
20 ment of the Uruguay Round Agreements Act.”.

21 (b) CONFORMING AMENDMENT.—The table of sec-
22 tions for chapter 113 of title 18, United States Code, is
23 amended by inserting after the item relating to section
24 2319 the following:

“2319A. Unauthorized fixation of and trafficking in sound recordings and music
videos of live musical performances.”.

1 **SEC. 514. RESTORED WORKS.**

2 (a) IN GENERAL.—Section 104A of title 17, United
3 States Code, is amended to read as follows:

4 **“§ 104A. Copyright in restored works**

5 “(a) AUTOMATIC PROTECTION AND TERM.—

6 “(1) TERM.—

7 “(A) Copyright subsists, in accordance
8 with this section, in restored works, and vests
9 automatically on the date of restoration.

10 “(B) Any work in which copyright is re-
11 stored under this section shall subsist for the
12 remainder of the term of copyright that the
13 work would have otherwise been granted in the
14 United States if the work never entered the
15 public domain in the United States.

16 “(2) EXCEPTION.—Any work in which the
17 copyright was ever owned or administered by the
18 Alien Property Custodian and in which the restored
19 copyright would be owned by a government or in-
20 strumentality thereof, is not a restored work.

21 “(b) OWNERSHIP OF RESTORED COPYRIGHT.—A re-
22 stored work vests initially in the author or initial
23 rightholder of the work as determined by the law of the
24 source country of the work.

25 “(c) FILING OF NOTICE OF INTENT TO ENFORCE
26 RESTORED COPYRIGHT AGAINST RELIANCE PARTIES.—

1 On or after the date of restoration, any person who owns
2 a copyright in a restored work or an exclusive right therein
3 may file with the Copyright Office a notice of intent to
4 enforce that person's copyright or exclusive right or may
5 serve such a notice directly on a reliance party. Acceptance
6 of a notice by the Copyright Office is effective as to any
7 reliance parties but shall not create a presumption of the
8 validity of any of the facts stated therein. Service on a
9 reliance party is effective as to that reliance party and
10 any other reliance parties with actual knowledge of such
11 service and of the contents of that notice.

12 “(d) REMEDIES FOR INFRINGEMENT OF RESTORED
13 COPYRIGHTS.—

14 “(1) ENFORCEMENT OF COPYRIGHT IN RE-
15 STORED WORKS IN THE ABSENCE OF A RELIANCE
16 PARTY.—As against any party who is not a reliance
17 party, the remedies provided in chapter 5 of this
18 title shall be available on or after the date of res-
19 toration of a restored copyright with respect to an
20 act of infringement of the restored copyright that is
21 commenced on or after the date of restoration.

22 “(2) ENFORCEMENT OF COPYRIGHT IN RE-
23 STORED WORKS AS AGAINST RELIANCE PARTIES.—
24 As against a reliance party, except to the extent pro-
25 vided in paragraphs (3) and (4), the remedies pro-

1 vided in chapter 5 of this title shall be available,
2 with respect to an act of infringement of a restored
3 copyright, on or after the date of restoration of the
4 restored copyright if the requirements of either of
5 the following subparagraphs are met:

6 “(A)(i) The owner of the restored copy-
7 right (or such owner’s agent) or the owner of
8 an exclusive right therein (or such owner’s
9 agent) files with the Copyright Office, during
10 the 24-month period beginning on the date of
11 restoration, a notice of intent to enforce the re-
12 stored copyright; and

13 “(ii)(I) the act of infringement commenced
14 after the end of the 12-month period beginning
15 on the date of publication of the notice in the
16 Federal Register;

17 “(II) the act of infringement commenced
18 before the end of the 12-month period described
19 in subclause (I) and continued after the end of
20 that 12-month period, in which case remedies
21 shall be available only for infringement occur-
22 ring after the end of that 12-month period; or

23 “(III) copies or phonorecords of a work in
24 which copyright has been restored under this

1 section are made after publication of the notice
2 of intent in the Federal Register.

3 “(B)(i) The owner of the restored copy-
4 right (or such owner’s agent) or the owner of
5 an exclusive right therein (or such owner’s
6 agent) serves upon a reliance party a notice of
7 intent to enforce a restored copyright; and

8 “(ii)(I) the act of infringement commenced
9 after the end of the 12-month period beginning
10 on the date the notice of intent is received;

11 “(II) the act of infringement commenced
12 before the end of the 12-month period described
13 in subclause (I) and continued after the end of
14 that 12-month period, in which case remedies
15 shall be available only for the infringement oc-
16 ccurring after the end of that 12-month period;
17 or

18 “(III) copies or phonorecords of a work in
19 which copyright has been restored under this
20 section are made after receipt of the notice of
21 intent.

22 In the event that notice is provided under both sub-
23 paragraphs (A) and (B), the 12-month period re-
24 ferred to in such subparagraphs shall run from the
25 earlier of publication or service of notice.

1 “(3) EXISTING DERIVATIVE WORKS.—(A) In
2 the case of a derivative work that is based upon a
3 restored work and is created—

4 “(i) before the date of the enactment of
5 the Uruguay Round Agreements Act, if the
6 source country of the derivative work is an eli-
7 gible country on such date, or

8 “(ii) before the date of adherence or proc-
9 lamation, if the source country of the derivative
10 work is not an eligible country on such date of
11 enactment,

12 a reliance party may continue to exploit that work
13 for the duration of the restored copyright if the reli-
14 ance party pays to the owner of the restored copy-
15 right reasonable compensation for conduct which
16 would be subject to a remedy for infringement but
17 for the provisions of this paragraph.

18 “(B) In the absence of an agreement between
19 the parties, the amount of such compensation shall
20 be determined by an action in United States district
21 court, and shall reflect any harm to the actual or po-
22 tential market for or value of the restored work from
23 the reliance party’s continued exploitation of the
24 work, as well as compensation for the relative con-

1 tributions of expression of the author of the restored
2 work and the reliance party to the derivative work.

3 “(4) COMMENCEMENT OF INFRINGEMENT FOR
4 RELIANCE PARTIES.—For purposes of section 412,
5 in the case of reliance parties, infringement shall be
6 deemed to have commenced before registration when
7 acts which would have constituted infringement had
8 the restored work been subject to copyright were
9 commenced before the date of restoration.

10 “(e) NOTICES OF INTENT TO ENFORCE A RESTORED
11 COPYRIGHT.—

12 “(1) NOTICES OF INTENT FILED WITH THE
13 COPYRIGHT OFFICE.—(A)(i) A notice of intent filed
14 with the Copyright Office to enforce a restored copy-
15 right shall be signed by the owner of the restored
16 copyright or the owner of an exclusive right therein,
17 who files the notice under subsection (d)(2)(A)(i)
18 (hereafter in this paragraph referred to as the
19 ‘owner’), or by the owner’s agent, shall identify the
20 title of the restored work, and shall include an Eng-
21 lish translation of the title and any other alternative
22 titles known to the owner by which the restored
23 work may be identified, and an address and tele-
24 phone number at which the owner may be contacted.
25 If the notice is signed by an agent, the agency rela-

1 tionship must have been constituted in a writing
2 signed by the owner before the filing of the notice.
3 The Copyright Office may specifically require in reg-
4 ulations other information to be included in the no-
5 tice, but failure to provide such other information
6 shall not invalidate the notice or be a basis for re-
7 fusals to list the restored work in the Federal Reg-
8 ister.

9 “(ii) If a work in which copyright is restored
10 has no formal title, it shall be described in the notice
11 of intent in detail sufficient to identify it.

12 “(iii) Minor errors or omissions may be cor-
13 rected by further notice at any time after the notice
14 of intent is filed. Notices of corrections for such
15 minor errors or omissions shall be accepted after the
16 period established in subsection (d)(2)(A)(i). Notices
17 shall be published in the Federal Register pursuant
18 to subparagraph (B).

19 “(B)(i) The Register of Copyrights shall publish
20 in the Federal Register, commencing not later than
21 4 months after the date of restoration for a particu-
22 lar nation and every 4 months thereafter for a pe-
23 riod of 2 years, lists identifying restored works and
24 the ownership thereof if a notice of intent to enforce
25 a restored copyright has been filed.

1 “(ii) Not less than 1 list containing all notices
2 of intent to enforce shall be maintained in the Public
3 Information Office of the Copyright Office and shall
4 be available for public inspection and copying during
5 regular business hours pursuant to sections 705 and
6 708. Such list shall also be published in the Federal
7 Register on an annual basis for the first 2 years
8 after the applicable date of restoration.

9 “(C) The Register of Copyrights is authorized
10 to fix reasonable fees based on the costs of receipt,
11 processing, recording, and publication of notices of
12 intent to enforce a restored copyright and correc-
13 tions thereto.

14 “(D)(i) Not later than 90 days before the date
15 the Agreement on Trade-Related Aspects of Intellec-
16 tual Property referred to in section 101(d)(15) of
17 the Uruguay Round Agreements Act enters into
18 force with respect to the United States, the Copy-
19 right Office shall issue and publish in the Federal
20 Register regulations governing the filing under this
21 subsection of notices of intent to enforce a restored
22 copyright.

23 “(ii) Such regulations shall permit owners of re-
24 stored copyrights to file simultaneously for registra-
25 tion of the restored copyright.

1 “(2) NOTICES OF INTENT SERVED ON A RELI-
2 ANCE PARTY.—(A) Notices of intent to enforce a re-
3 stored copyright may be served on a reliance party
4 at any time after the date of restoration of the re-
5 stored copyright.

6 “(B) Notices of intent to enforce a restored
7 copyright served on a reliance party shall be signed
8 by the owner or the owner’s agent, shall identify the
9 restored work and the work in which the restored
10 work is used, if any, in detail sufficient to identify
11 them, and shall include an English translation of the
12 title, any other alternative titles known to the owner
13 by which the work may be identified, the use or uses
14 to which the owner objects, and an address and tele-
15 phone number at which the reliance party may con-
16 tact the owner. If the notice is signed by an agent,
17 the agency relationship must have been constituted
18 in writing and signed by the owner before service of
19 the notice.

20 “(3) EFFECT OF MATERIAL FALSE STATE-
21 MENTS.—Any material false statement knowingly
22 made with respect to any restored copyright identi-
23 fied in any notice of intent shall make void all claims
24 and assertions made with respect to such restored
25 copyright.

1 “(f) IMMUNITY FROM WARRANTY AND RELATED LI-
2 ABILITY.—

3 “(1) IN GENERAL.—Any person who warrants,
4 promises, or guarantees that a work does not violate
5 an exclusive right granted in section 106 shall not
6 be liable for legal, equitable, arbitral, or administra-
7 tive relief if the warranty, promise, or guarantee is
8 breached by virtue of the restoration of copyright
9 under this section, if such warranty, promise, or
10 guarantee is made before January 1, 1995.

11 “(2) PERFORMANCES.—No person shall be re-
12 quired to perform any act if such performance is
13 made infringing by virtue of the restoration of copy-
14 right under the provisions of this section, if the obli-
15 gation to perform was undertaken before January 1,
16 1995.

17 “(g) PROCLAMATION OF COPYRIGHT RESTORA-
18 TION.—Whenever the President finds that a particular
19 foreign nation extends, to works by authors who are na-
20 tionals or domiciliaries of the United States, restored
21 copyright protection on substantially the same basis as
22 provided under this section, the President may by procla-
23 mation extend restored protection provided under this sec-
24 tion to any work—

1 “(1) of which one or more of the authors is, on
2 the date of first publication, a national, domiciliary,
3 or sovereign authority of that nation; or

4 “(2) which was first published in that nation.

5 The President may revise, suspend, or revoke any such
6 proclamation or impose any conditions or limitations on
7 protection under such a proclamation.

8 “(h) DEFINITIONS.—For purposes of this section and
9 section 109(a):

10 “(1) The term ‘date of adherence or proclama-
11 tion’ means the earlier of the date on which a for-
12 eign nation which, as of the date the WTO Agree-
13 ment enters into force with respect to the United
14 States, is not a nation adhering to the Berne Con-
15 vention or a WTO member country, becomes—

16 “(A) a nation adhering to the Berne Con-
17 vention or a WTO member country; or

18 “(B) subject to a Presidential proclamation
19 under subsection (g).

20 “(2) The ‘date of restoration’ of a restored
21 copyright is the later of—

22 “(A) the date on which the Agreement on
23 Trade-Related Aspects of Intellectual Property
24 referred to in section 101(d)(15) of the Uru-
25 guay Round Agreements Act enters into force

1 with respect to the United States, if the source
2 country of the restored work is a nation adher-
3 ing to the Berne Convention or a WTO member
4 country on such date; or

5 “(B) the date of adherence or proclama-
6 tion, in the case of any other source country of
7 the restored work.

8 “(3) The term ‘eligible country’ means a nation,
9 other than the United States, that is a WTO mem-
10 ber country, adheres to the Berne Convention, or is
11 subject to a proclamation under section 104A(g).

12 “(4) The term ‘reliance party’ means any per-
13 son who—

14 “(A) with respect to a particular work, en-
15 gages in acts, before the source country of that
16 work becomes an eligible country, which would
17 have violated section 106 if the restored work
18 had been subject to copyright protection, and
19 who, after the source country becomes an eligi-
20 ble country, continues to engage in such acts;

21 “(B) before the source country of a par-
22 ticular work becomes an eligible country, makes
23 or acquires 1 or more copies or phonorecords of
24 that work; or

1 “(C) as the result of the sale or other dis-
2 position of a derivative work covered under sub-
3 section (d)(3), or significant assets of a person
4 described in subparagraph (A) or (B), is a suc-
5 cessor, assignee, or licensee of that person.

6 “(5) The term ‘restored copyright’ means copy-
7 right in a restored work under this section.

8 “(6) The term ‘restored work’ means an origi-
9 nal work of authorship that—

10 “(A) is protected under subsection (a);

11 “(B) is not in the public domain in its
12 source country through expiration of term of
13 protection;

14 “(C) is in the public domain in the United
15 States due to—

16 “(i) noncompliance with formalities
17 imposed at any time by United States
18 copyright law, including failure of renewal,
19 lack of proper notice, or failure to comply
20 with any manufacturing requirements;

21 “(ii) lack of subject matter protection
22 in the case of sound recordings fixed before
23 February 15, 1972; or

24 “(iii) lack of national eligibility; and

1 “(D) has at least one author or rightholder
2 who was, at the time the work was created, a
3 national or domiciliary of an eligible country,
4 and if published, was first published in an eligi-
5 ble country and not published in the United
6 States during the 30-day period following publi-
7 cation in such eligible country.

8 “(7) The term ‘rightholder’ means the person—

9 “(A) who, with respect to a sound record-
10 ing, first fixes a sound recording with author-
11 ization, or

12 “(B) who has acquired rights from the per-
13 son described in subparagraph (A) by means of
14 any conveyance or by operation of law.

15 “(8) The ‘source country’ of a restored work
16 is—

17 “(A) a nation other than the United
18 States;

19 “(B) in the case of an unpublished work—

20 “(i) the eligible country in which the
21 author or rightholder is a national or
22 domiciliary, or, if a restored work has more
23 than 1 author or rightholder, the majority
24 of foreign authors or rightholders are na-

1 tionals or domiciliaries of eligible countries;
2 or

3 “(ii) if the majority of authors or
4 rightholders are not foreign, the nation
5 other than the United States which has the
6 most significant contacts with the work;
7 and

8 “(C) in the case of a published work—

9 “(i) the eligible country in which the
10 work is first published, or

11 “(ii) if the restored work is published
12 on the same day in 2 or more eligible
13 countries, the eligible country which has
14 the most significant contacts with the
15 work.

16 “(9) The terms ‘WTO Agreement’ and ‘WTO
17 member country’ have the meanings given those
18 terms in paragraphs (9) and (10), respectively, of
19 section 2 of the Uruguay Round Agreements Act.”.

20 (b) LIMITATION.—Section 109(a) of title 17, United
21 States Code, is amended by adding at the end the follow-
22 ing: “Notwithstanding the preceding sentence, copies or
23 phonorecords of works subject to restored copyright under
24 section 104A that are manufactured before the date of
25 restoration of copyright or, with respect to reliance par-

1 ties, before publication or service of notice under section
2 104A(e), may be sold or otherwise disposed of without the
3 authorization of the owner of the restored copyright for
4 purposes of direct or indirect commercial advantage only
5 during the 12-month period beginning on—

6 “(1) the date of the publication in the Federal
7 Register of the notice of intent filed with the Copy-
8 right Office under section 104A(d)(2)(A), or

9 “(2) the date of the receipt of actual notice
10 served under section 104A(d)(2)(B),
11 whichever occurs first.”.

12 (c) CONFORMING AMENDMENT.—The item relating
13 to section 104A in the table of sections for chapter 1 of
14 title 17, United States Code, is amended to read as fol-
15 lows:

“104A. Copyright in restored works.”.

16 **Subtitle B—Trademark Provisions**

17 **SEC. 521. DEFINITION OF “ABANDONED”.**

18 Section 45 of the Act entitled “An Act to provide for
19 the registration and protection of trade-marks used in
20 commerce, to carry out the provisions of certain inter-
21 national conventions, and for other purposes”, approved
22 July 5, 1946 (15 U.S.C. 1127) (hereafter in this title re-
23 ferred to as the “Trademark Act of 1946”), is amended
24 by amending the paragraph defining “abandoned” to read
25 as follows:

1 “A mark shall be deemed to be ‘abandoned’ if either
2 of the following occurs:

3 “(1) When its use has been discontinued with
4 intent not to resume such use. Intent not to resume
5 may be inferred from circumstances. Nonuse for 3
6 consecutive years shall be prima facie evidence of
7 abandonment. ‘Use’ of a mark means the bona fide
8 use of such mark made in the ordinary course of
9 trade, and not made merely to reserve a right in a
10 mark.

11 “(2) When any course of conduct of the owner,
12 including acts of omission as well as commission,
13 causes the mark to become the generic name for the
14 goods or services on or in connection with which it
15 is used or otherwise to lose its significance as a
16 mark. Purchaser motivation shall not be a test for
17 determining abandonment under this paragraph.”.

18 **SEC. 522. NONREGISTRABILITY OF MISLEADING GEO-**
19 **GRAPHIC INDICATIONS FOR WINES AND SPIR-**
20 **ITS.**

21 Subsection (a) of section 2 of the Trademark Act of
22 1946 (15 U.S.C. 1052(a)) is amended to read as follows:

23 “(a) Consists of or comprises immoral, deceptive, or
24 scandalous matter; or matter which may disparage or
25 falsely suggest a connection with persons, living or dead,

1 institutions, beliefs, or national symbols, or bring them
2 into contempt, or disrepute; or a geographical indication
3 which, when used on or in connection with wines or spirits,
4 identifies a place other than the origin of the goods and
5 is first used on or in connection with wines or spirits by
6 the applicant on or after one year after the date on which
7 the WTO Agreement (as defined in section 2(9) of the
8 Uruguay Round Agreements Act) enters into force with
9 respect to the United States.”.

10 **SEC. 523. EFFECTIVE DATE.**

11 The amendments made by this subtitle take effect
12 one year after the date on which the WTO Agreement en-
13 ters into force with respect to the United States.

14 **Subtitle C—Patent Provisions**

15 **SEC. 531. TREATMENT OF INVENTIVE ACTIVITY.**

16 (a) IN GENERAL.—Section 104 of title 35, United
17 States Code, is amended to read as follows:

18 **“§ 104. Invention made abroad**

19 “(a) IN GENERAL.—

20 “(1) PROCEEDINGS.—In proceedings in the
21 Patent and Trademark Office, in the courts, and be-
22 fore any other competent authority, an applicant for
23 a patent, or a patentee, may not establish a date of
24 invention by reference to knowledge or use thereof,
25 or other activity with respect thereto, in a foreign

1 country other than a NAFTA country or a WTO
2 member country, except as provided in sections 119
3 and 365 of this title.

4 “(2) RIGHTS.—If an invention was made by a
5 person, civil or military—

6 “(A) while domiciled in the United States,
7 and serving in any other country in connection
8 with operations by or on behalf of the United
9 States,

10 “(B) while domiciled in a NAFTA country
11 and serving in another country in connection
12 with operations by or on behalf of that NAFTA
13 country, or

14 “(C) while domiciled in a WTO member
15 country and serving in another country in con-
16 nection with operations by or on behalf of that
17 WTO member country,

18 that person shall be entitled to the same rights of
19 priority in the United States with respect to such in-
20 vention as if such invention had been made in the
21 United States, that NAFTA country, or that WTO
22 member country, as the case may be.

23 “(3) USE OF INFORMATION.—To the extent
24 that any information in a NAFTA country or a
25 WTO member country concerning knowledge, use, or

1 other activity relevant to proving or disproving a
2 date of invention has not been made available for
3 use in a proceeding in the Patent and Trademark
4 Office, a court, or any other competent authority to
5 the same extent as such information could be made
6 available in the United States, the Commissioner,
7 court, or such other authority shall draw appropriate
8 inferences, or take other action permitted by statute,
9 rule, or regulation, in favor of the party that re-
10 quested the information in the proceeding.

11 “(b) DEFINITIONS.—As used in this section—

12 “(1) the term ‘NAFTA country’ has the mean-
13 ing given that term in section 2(4) of the North
14 American Free Trade Agreement Implementation
15 Act; and

16 “(2) the term ‘WTO member country’ has the
17 meaning given that term in section 2(10) of the
18 Uruguay Round Agreements Act.”.

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendment made by this section shall
22 apply to all patent applications that are filed on or
23 after the date that is 12 months after the date of
24 entry into force of the WTO Agreement with respect
25 to the United States.

1 (2) ESTABLISHMENT OF DATE.—An applicant
2 for a patent, or a patentee, may not establish a date
3 of invention for purposes of title 35, United States
4 Code, that is earlier than 12 months after the date
5 of entry into force of the WTO Agreement with re-
6 spect to the United States by reference to knowledge
7 or use, or other activity, in a WTO member country,
8 except as provided in sections 119 and 365 of such
9 title.

10 **SEC. 532. PATENT TERM AND INTERNAL PRIORITY.**

11 (a) PATENT RIGHTS.—

12 (1) CONTENTS AND TERM OF PATENT.—Section
13 154 of title 35, United States Code, is amended to
14 read as follows:

15 **“§ 154. Contents and term of patent**

16 “(a) IN GENERAL.—

17 “(1) CONTENTS.—Every patent shall contain a
18 short title of the invention and a grant to the pat-
19 entee, his heirs or assigns, of the right to exclude
20 others from making, using, offering for sale, or sell-
21 ing the invention throughout the United States or
22 importing the invention into the United States, and,
23 if the invention is a process, of the right to exclude
24 others from using, offering for sale or selling
25 throughout the United States, or importing into the

1 United States, products made by that process, refer-
2 ring to the specification for the particulars thereof.

3 “(2) TERM.—Subject to the payment of fees
4 under this title, such grant shall be for a term be-
5 ginning on the date on which the patent issues and
6 ending 20 years from the date on which the applica-
7 tion for the patent was filed in the United States or,
8 if the application contains a specific reference to an
9 earlier filed application or applications under section
10 120, 121, or 365(c) of this title, from the date on
11 which the earliest such application was filed.

12 “(3) PRIORITY.—Priority under section 119,
13 365(a), or 365(b) of this title shall not be taken into
14 account in determining the term of a patent.

15 “(4) SPECIFICATION AND DRAWING.—A copy of
16 the specification and drawing shall be annexed to
17 the patent and be a part of such patent.

18 “(b) TERM EXTENSION.—

19 “(1) INTERFERENCE DELAY OR SECRECY OR-
20 DERS.—If the issue of an original patent is delayed
21 due to a proceeding under section 135(a) of this
22 title, or because the application for patent is placed
23 under an order pursuant to section 181 of this title,
24 the term of the patent shall be extended for the pe-
25 riod of delay, but in no case more than 5 years.

1 “(2) EXTENSION FOR APPELLATE REVIEW.—If
2 the issue of a patent is delayed due to appellate re-
3 view by the Board of Patent Appeals and Inter-
4 ferences or by a Federal court and the patent is is-
5 sued pursuant to a decision in the review reversing
6 an adverse determination of patentability, the term
7 of the patent shall be extended for a period of time
8 but in no case more than 5 years. A patent shall not
9 be eligible for extension under this paragraph if it
10 is subject to a terminal disclaimer due to the issue
11 of another patent claiming subject matter that is not
12 patentably distinct from that under appellate review.

13 “(3) LIMITATIONS.—The period of extension re-
14 ferred to in paragraph (2)—

15 “(A) shall include any period beginning on
16 the date on which an appeal is filed under sec-
17 tion 134 or 141 of this title, or on which an ac-
18 tion is commenced under section 145 of this
19 title, and ending on the date of a final decision
20 in favor of the applicant;

21 “(B) shall be reduced by any time attrib-
22 utable to appellate review before the expiration
23 of 3 years from the filing date of the applica-
24 tion for patent; and

1 “(C) shall be reduced for the period of
2 time during which the applicant for patent did
3 not act with due diligence, as determined by the
4 Commissioner.

5 “(4) LENGTH OF EXTENSION.—The total dura-
6 tion of all extensions of a patent under this sub-
7 section shall not exceed 5 years.

8 “(c) CONTINUATION.—

9 “(1) DETERMINATION.—The term of a patent
10 that is in force on or that results from an applica-
11 tion filed before the date that is 6 months after the
12 date of the enactment of the Uruguay Round Agree-
13 ments Act shall be the greater of the 20-year term
14 as provided in subsection (a), or 17 years from
15 grant, subject to any terminal disclaimers.

16 “(2) REMEDIES.—The remedies of sections
17 283, 284, and 285 of this title shall not apply to
18 Acts which—

19 “(A) were commenced or for which sub-
20 stantial investment was made before the date
21 that is 6 months after the date of the enact-
22 ment of the Uruguay Round Agreements Act;
23 and

24 “(B) became infringing by reason of para-
25 graph (1).

1 “(3) REMUNERATION.—The acts referred to in
2 paragraph (2) may be continued only upon the pay-
3 ment of an equitable remuneration to the patentee
4 that is determined in an action brought under chap-
5 ter 28 and chapter 29 (other than those provisions
6 excluded by paragraph (2)) of this title.”.

7 (2) PROVISION OF FURTHER LIMITED REEXAM-
8 INATION AND CONDITIONS OF RESTRICTION RE-
9 QUIREMENTS.—(A) The Commissioner of Patents
10 and Trademarks shall prescribe regulations to pro-
11 vide for further limited reexamination of applications
12 that have been pending for 2 years or longer as of
13 the effective date of section 154(a)(2) of title 35,
14 United States Code, as added by paragraph (1) of
15 this subsection, taking into account any reference
16 made in such application to any earlier filed applica-
17 tion under section 120, 121, or 365(c) of such title.
18 The Commissioner may establish appropriate fees
19 for such further limited reexamination.

20 (B) The Commissioner of Patents and Trade-
21 marks shall prescribe regulations to provide for the
22 examination of more than 1 independent and dis-
23 tinct invention in an application that has been pend-
24 ing for 3 years or longer as of the effective date of
25 section 154(a)(2) of title 35, United States Code, as

1 added by paragraph (1) of this subsection, taking
2 into account any reference made in such application
3 to any earlier filed application under section 120,
4 121, or 365(c) of such title. The Commissioner may
5 establish appropriate fees for such examination.

6 (b) ESTABLISHMENT OF A DOMESTIC PRIORITY SYS-
7 TEM.—

8 (1) IN GENERAL.—Section 119 of title 35,
9 United States Code, is amended—

10 (A) by amending the section caption to
11 read as follows:

12 **“§ 119. Benefit of earlier filing date; right of priority”;**

13 (B) by designating the undesignated para-
14 graphs as subsections (a), (b), (c), and (d), re-
15 spectively; and

16 (C) by adding at the end the following:

17 “(e)(1) An application for patent filed under section
18 111(a) or section 363 of this title for an invention dis-
19 closed in the manner provided by the first paragraph of
20 section 112 of this title in a provisional application filed
21 under section 111(b) of this title, by an inventor or inven-
22 tors named in the provisional application, shall have the
23 same effect, as to such invention, as though filed on the
24 date of the provisional application filed under section
25 111(b) of this title, if the application for patent filed under

1 section 111(a) or section 363 of this title is filed not later
2 than 12 months after the date on which the provisional
3 application was filed and if it contains or is amended to
4 contain a specific reference to the provisional application.

5 “(2) A provisional application filed under section
6 111(b) of this title may not be relied upon in any proceed-
7 ing in the Patent and Trademark Office unless the fee
8 set forth in subparagraph (A) or (C) of section 41(a)(1)
9 of this title has been paid and the provisional application
10 was pending on the filing date of the application for patent
11 under section 111(a) or section 363 of this title.”.

12 (2) FEES.—Section 41(a)(1) of title 35, United
13 States Code, is amended by adding at the end the
14 following:

15 “(C) On filing each provisional application for
16 an original patent, \$150.”.

17 (3) APPLICATIONS.—Section 111 of title 35,
18 United States Code, is amended to read as follows:

19 **“§ 111. Application**

20 “(a) IN GENERAL.—

21 “(1) WRITTEN APPLICATION.—An application
22 for patent shall be made, or authorized to be made,
23 by the inventor, except as otherwise provided in this
24 title, in writing to the Commissioner.

1 “(2) CONTENTS.—Such application shall in-
2 clude—

3 “(A) a specification as prescribed by sec-
4 tion 112 of this title;

5 “(B) a drawing as prescribed by section
6 113 of this title; and

7 “(C) an oath by the applicant as pre-
8 scribed by section 115 of this title.

9 “(3) FEE AND OATH.—The application must be
10 accompanied by the fee required by law. The fee and
11 oath may be submitted after the specification and
12 any required drawing are submitted, within such pe-
13 riod and under such conditions, including the pay-
14 ment of a surcharge, as may be prescribed by the
15 Commissioner.

16 “(4) FAILURE TO SUBMIT.—Upon failure to
17 submit the fee and oath within such prescribed pe-
18 riod, the application shall be regarded as abandoned,
19 unless it is shown to the satisfaction of the Commis-
20 sioner that the delay in submitting the fee and oath
21 was unavoidable or unintentional. The filing date of
22 an application shall be the date on which the speci-
23 fication and any required drawing are received in the
24 Patent and Trademark Office.

25 “(b) PROVISIONAL APPLICATION.—

1 “(1) AUTHORIZATION.—A provisional applica-
2 tion for patent shall be made or authorized to be
3 made by the inventor, except as otherwise provided
4 in this title, in writing to the Commissioner. Such
5 application shall include—

6 “(A) a specification as prescribed by the
7 first paragraph of section 112 of this title; and

8 “(B) a drawing as prescribed by section
9 113 of this title.

10 “(2) CLAIM.—A claim, as required by the sec-
11 ond through fifth paragraphs of section 112, shall
12 not be required in a provisional application.

13 “(3) FEE.—(A) The application must be ac-
14 companied by the fee required by law.

15 “(B) The fee may be submitted after the speci-
16 fication and any required drawing are submitted,
17 within such period and under such conditions, in-
18 cluding the payment of a surcharge, as may be pre-
19 scribed by the Commissioner.

20 “(C) Upon failure to submit the fee within such
21 prescribed period, the application shall be regarded
22 as abandoned, unless it is shown to the satisfaction
23 of the Commissioner that the delay in submitting
24 the fee was unavoidable or unintentional.

1 “(4) FILING DATE.—The filing date of a provi-
2 sional application shall be the date on which the
3 specification and any required drawing are received
4 in the Patent and Trademark Office.

5 “(5) ABANDONMENT.—The provisional applica-
6 tion shall be regarded as abandoned 12 months after
7 the filing date of such application and shall not be
8 subject to revival thereafter.

9 “(6) OTHER BASIS FOR PROVISIONAL APPLICA-
10 TION.—Subject to all the conditions in this sub-
11 section and section 119(e) of this title, and as pre-
12 scribed by the Commissioner, an application for pat-
13 ent filed under subsection (a) may be treated as a
14 provisional application for patent.

15 “(7) NO RIGHT OF PRIORITY OR BENEFIT OF
16 EARLIEST FILING DATE.—A provisional application
17 shall not be entitled to the right of priority of any
18 other application under section 119 or 365(a) of this
19 title or to the benefit of an earlier filing date in the
20 United States under section 120, 121, or 365(c) of
21 this title.

22 “(8) APPLICABLE PROVISIONS.—The provisions
23 of this title relating to applications for patent shall
24 apply to provisional applications for patent, except
25 as otherwise provided, and except that provisional

1 applications for patent shall not be subject to sec-
2 tions 115, 131, 135, and 157 of this title.”.

3 (c) CONFORMING CHANGES.—

4 (1) Section 156(a)(2) of title 35, United States
5 Code, is amended by inserting “under subsection
6 (e)(1) of this section” after “extended”.

7 (2) Section 172 of title 35, United States Code,
8 is amended—

9 (A) by striking “section 119” and insert-
10 ing “subsections (a) through (d) of section
11 119”; and

12 (B) by inserting at the end the following
13 new sentence:

14 “The right of priority provided for by section 119(e) of
15 this title shall not apply to designs.”.

16 (3) Section 173 of title 35, United States Code,
17 is amended by inserting “from the date of grant”
18 after “years”.

19 (4) Section 365 of title 35, United States Code,
20 is amended—

21 (A) in subsection (a), by striking “section
22 119” and inserting “subsections (a) through (d)
23 of section 119”; and

1 (B) in subsection (b), by striking “the first
2 paragraph of section 119” and inserting “sec-
3 tion 119(a)”.

4 (5) Section 373 of title 35, United States Code,
5 is amended by striking “section 119” and inserting
6 “subsections (a) through (d) of section 119”.

7 (6) The table of sections for chapter 11 of title
8 35, United States Code, is amended—

9 (A) by striking the item relating to section
10 111 and inserting the following:

“111. Application.”;

11 and

12 (B) by striking the item relating to section
13 119 and inserting the following:

“119. Benefit of earlier filing date; right of priority.”.

14 **SEC. 533. PATENT RIGHTS.**

15 (a) DEFINITION OF INFRINGEMENT.—Section 271 of
16 title 35, United States Code, is amended—

17 (1) in subsection (a)—

18 (A) by inserting “, offers to sell,” after
19 “uses”; and

20 (B) by inserting “or imports into the Unit-
21 ed States any patented invention” after “the
22 United States”;

1 (2) in subsection (c), by striking “sells” and in-
2 serting “offers to sell or sells within the United
3 States or imports into the United States”;

4 (3) in subsection (e)—

5 (A) in paragraph (1), by striking “or sell”
6 and inserting “offer to sell, or sell within the
7 United States or import into the United
8 States”;

9 (B) in paragraph (3), by striking “or sell-
10 ing” and inserting “offering to sell, or selling
11 within the United States or importing into the
12 United States”;

13 (C) in paragraph (4)(B), by striking “or
14 sale” and inserting “offer to sell, or sale within
15 the United States or importation into the Unit-
16 ed States”; and

17 (D) in paragraph (4)(C), by striking “or
18 sale” and inserting “offer to sell, or sale within
19 the United States or importation into the Unit-
20 ed States”;

21 (4) in subsection (g)—

22 (A) by striking “sells” and inserting “of-
23 fers to sell, sells,”;

24 (B) by striking “importation, sale,” and
25 inserting “importation, offer to sell, sale,”; and

1 (C) by striking “other use or” and insert-
2 ing “other use, offer to sell, or”; and

3 (5) by adding at the end the following:

4 “(i) As used in this section, an ‘offer for sale’ or an
5 ‘offer to sell’ by a person other than the patentee, or any
6 designee of the patentee, is that in which the sale will
7 occur before the expiration of the term of the patent.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Paragraph (2) of section 41(c) of title 35,
10 United States Code, is amended to read as follows:

11 “(2) A patent, the term of which has been maintained
12 as a result of the acceptance of a payment of a mainte-
13 nance fee under this subsection, shall not abridge or affect
14 the right of any person or that person’s successors in busi-
15 ness who made, purchased, offered to sell, or used any-
16 thing protected by the patent within the United States,
17 or imported anything protected by the patent into the
18 United States after the 6-month grace period but prior
19 to the acceptance of a maintenance fee under this sub-
20 section, to continue the use of, to offer for sale, or to sell
21 to others to be used, offered for sale, or sold, the specific
22 thing so made, purchased, offered for sale, used, or im-
23 ported. The court before which such matter is in question
24 may provide for the continued manufacture, use, offer for
25 sale, or sale of the thing made, purchased, offered for sale,

1 or used within the United States, or imported into the
2 United States, as specified, or for the manufacture, use,
3 offer for sale, or sale in the United States of which sub-
4 stantial preparation was made after the 6-month grace pe-
5 riod but before the acceptance of a maintenance fee under
6 this subsection, and the court may also provide for the
7 continued practice of any process that is practiced, or for
8 the practice of which substantial preparation was made,
9 after the 6-month grace period but before the acceptance
10 of a maintenance fee under this subsection, to the extent
11 and under such terms as the court deems equitable for
12 the protection of investments made or business com-
13 menced after the 6-month grace period but before the ac-
14 ceptance of a maintenance fee under this subsection.”.

15 (2) The second undesignated paragraph of sec-
16 tion 252 of title 35, United States Code, is amended
17 to read as follows:

18 “A reissued patent shall not abridge or affect the
19 right of any person or that person’s successors in business
20 who, prior to the grant of a reissue, made, purchased, of-
21 fered to sell, or used within the United States, or imported
22 into the United States, anything patented by the reissued
23 patent, to continue the use of, to offer to sell, or to sell
24 to others to be used, offered for sale, or sold, the specific
25 thing so made, purchased, offered for sale, used, or im-

1 ported unless the making, using, offering for sale, or sell-
2 ing of such thing infringes a valid claim of the reissued
3 patent which was in the original patent. The court before
4 which such matter is in question may provide for the con-
5 tinued manufacture, use, offer for sale, or sale of the thing
6 made, purchased, offered for sale, used, or imported as
7 specified, or for the manufacture, use, offer for sale, or
8 sale in the United States of which substantial preparation
9 was made before the grant of the reissue, and the court
10 may also provide for the continued practice of any process
11 patented by the reissue that is practiced, or for the prac-
12 tice of which substantial preparation was made, before the
13 grant of the reissue, to the extent and under such terms
14 as the court deems equitable for the protection of invest-
15 ments made or business commenced before the grant of
16 the reissue.”.

17 (3) Section 262 of title 35, United States Code,
18 is amended—

19 (A) by striking “use or sell” and inserting
20 “use, offer to sell, or sell”; and

21 (B) by inserting “within the United States,
22 or import the patented invention into the
23 United States,” after “invention”.

1 (4) Section 272 of title 35, United States Code,
2 is amended by striking “not sold” and inserting “not
3 offered for sale or sold”.

4 (5) Section 287 of title 35, United States Code,
5 is amended—

6 (A) in subsection (a)—

7 (i) by striking “making or selling”
8 and inserting “making, offering for sale, or
9 selling within the United States”; and

10 (ii) by inserting “or importing any
11 patented article into the United States,”
12 after “under them,”; and

13 (B) in subsection (b)—

14 (i) in paragraph (1)(C), by striking
15 “use, or sale” and inserting “use, offer for
16 sale, or sale”;

17 (ii) in paragraph (4)(A), by striking
18 “sold or” and inserting “sold, offered for
19 sale, or” in the matter preceding clause (i);

20 (iii) in paragraph (4)(A)(ii), by strik-
21 ing “use, or sale” and inserting “use, offer
22 for sale, or sale”;

23 (iv) in paragraph (4)(C), by striking
24 “have been sold” and inserting “have been
25 offered for sale or sold”; and

1 (v) in paragraph (4)(C), by striking
2 “United States before” and inserting
3 “United States, or imported by the person
4 into the United States, before”.

5 (6) Section 292(a) of title 35, United States
6 Code, is amended—

7 (A) by striking “used, or sold by him” and
8 inserting “used, offered for sale, or sold by such
9 person within the United States, or imported by
10 the person into the United States”; and

11 (B) by striking “made or sold” and insert-
12 ing “made, offered for sale, sold, or imported
13 into the United States”.

14 (7) Section 295 of title 35, United States Code,
15 is amended by striking “sale, or use” and inserting
16 “sale, offer for sale, or use”.

17 (8) Section 307(b) of title 35, United States
18 Code, is amended by striking “used anything” and
19 inserting “used within the United States, or im-
20 ported into the United States, anything”.

21 **SEC. 534. EFFECTIVE DATES AND APPLICATION.**

22 (a) IN GENERAL.—Subject to subsection (b), the
23 amendments made by this subtitle take effect on the date
24 that is one year after the date on which the WTO Agree-
25 ment enters into force with respect to the United States.

1 (b) PATENT APPLICATIONS.—

2 (1) IN GENERAL.—Subject to paragraph (2),
3 the amendments made by section 532 take effect on
4 the date that is 6 months after the date of the en-
5 actment of this Act and shall apply to all patent ap-
6 plications filed in the United States on or after the
7 effective date.

8 (2) SECTION 154(a)(1).—Section 154(a)(1) of
9 title 35, United States Code, as amended by section
10 532(a)(1) of this Act, shall take effect on the effec-
11 tive date described in subsection (a).

12 (3) EARLIEST FILING.—The term of a patent
13 granted on a application that is filed on or after the
14 effective date described in subsection (a) and that
15 contains a specific reference to an earlier application
16 filed under the provisions of section 120, 121, or
17 365(c) of title 35, United States Code, shall be
18 measured from the filing date of the earliest filed
19 application.

20 **TITLE VI—RELATED PROVISIONS**

21 **Subtitle A—Expiring Provisions**

22 **SEC. 601. GENERALIZED SYSTEM OF PREFERENCES.**

23 (a) EXTENSION OF DUTY-FREE TREATMENT UNDER
24 SYSTEM.—Section 505(a) of the Trade Act of 1974 (19

1 U.S.C. 2465(a)) is amended by striking “September 30,
2 1994” and inserting “July 31, 1995”.

3 (b) RETROACTIVE APPLICATION FOR CERTAIN LIQ-
4 UIDATIONS AND RELIQUIDATIONS.—

5 (1) IN GENERAL.—Notwithstanding section 514
6 of the Tariff Act of 1930 or any other provision of
7 law and subject to paragraph (2), the entry—

8 (A) of any article to which duty-free treat-
9 ment under title V of the Trade Act of 1974
10 would have applied if the entry had been made
11 on September 30, 1994, and

12 (B) that was made after September 30,
13 1994, and before such date of enactment,
14 shall be liquidated or reliquidated as free of duty,
15 and the Secretary of the Treasury shall refund any
16 duty paid with respect to such entry. As used in this
17 subsection, the term “entry” includes a withdrawal
18 from warehouse for consumption.

19 (2) REQUESTS.—Liquidation or reliquidation
20 may be made under paragraph (1) with respect to
21 an entry only if a request therefor is filed with the
22 Customs Service, within 180 days after the date of
23 the enactment of this Act, that contains sufficient
24 information to enable the Customs Service—

25 (A) to locate the entry; or

1 (B) to reconstruct the entry if it cannot be
2 located.

3 **SEC. 602. U.S. INSULAR POSSESSIONS.**

4 (a) EXTENSION OF VERIFICATION AND CERTIFICATE
5 ISSUANCE PROVISIONS.—Additional U.S. Note 5(h)(i) to
6 chapter 91 of the HTS is amended by striking “and before
7 January 1, 1995,” and inserting “and before January 1,
8 2007,”.

9 (b) EXTENSION OF CERTIFICATE NUMBER PIC–EV–
10 89.—Notwithstanding any other provision of law, the pro-
11 duction incentive certificate, number PIC–EV–89, issued
12 jointly by the Secretary of Commerce and the Secretary
13 of the Interior, pursuant to paragraph (h)(i)(B) of Addi-
14 tional U.S. Note 5 to chapter 91 of the HTS (formerly
15 paragraph (h)(i)(II) of headnote 6 of schedule 7, part 2,
16 subpart E of the Tariff Schedules of the United States),
17 shall be deemed to have been reissued on the date of the
18 enactment of this Act in the amount of the balance re-
19 maining on such certificate, and shall expire on the date
20 that is 1 year after such date of enactment.

1 **Subtitle B—Certain Customs**
2 **Provisions**

3 **SEC. 611. REIMBURSEMENTS FROM CUSTOMS USER FEE**
4 **ACCOUNT.**

5 (a) IN GENERAL.—Subclause (II) of section
6 13031(f)(3)(A)(i) of the Consolidated Omnibus Budget
7 Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)(A)(i)(II))
8 is amended to read as follows:

9 “(II) paying premium pay under section
10 5(b) of the Act of February 13, 1911, but the
11 amount for which reimbursement may be made
12 under this subclause may not, for any fiscal
13 year, exceed the difference between the total
14 cost of all the premium pay for such year cal-
15 culated under section 5(b) and the cost of the
16 night and holiday premium pay that the Cus-
17 toms Service would have incurred for the same
18 inspectional work on the day before the effective
19 date of section 13813 of the Omnibus Budget
20 Reconciliation Act of 1993,”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to customs inspectional services
23 performed on or after January 1, 1994.

1 **SEC. 612. MERCHANDISE PROCESSING FEES.**

2 (a) IN GENERAL.—Section 13031 of the Consolidated
3 Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.
4 58c) is amended—

5 (1) in subsection (a)(9)—

6 (A) in subparagraph (A), by striking
7 “0.17” and inserting “0.21”,

8 (B) in subparagraph (B)(i), by striking
9 “(but not to a rate of more than 0.19 percent
10 nor less than 0.15 percent) that would” and in-
11 sserting “(but not to a rate of more than 0.21
12 percent nor less than 0.15 percent) and the
13 amounts specified in subsection (b)(8)(A)(i)
14 (but not to more than \$485 nor less than \$21)
15 to rates and amounts which would”, and

16 (C) in subparagraph (B)(ii), by striking
17 “section 613A of the Tariff Act of 1930” and
18 inserting “subsection (f)”

19 (2) in subsection (a)(10)—

20 (A) in subparagraph (C), by striking
21 “entry or release.” and inserting “entry or re-
22 lease,”,

23 (B) in clause (ii), by striking “\$5” and in-
24 sserting “\$6”, and

25 (C) in clause (iii), by striking “\$8” and in-
26 sserting “\$9”, and

1 (3) in subsection (b)(8)(A)(i), by striking
2 “\$400 or be less than \$21”, and inserting “\$485 or
3 be less than \$25, unless adjusted pursuant to sub-
4 section (a)(9)(B)”.

5 (b) EFFECTIVE DATE.—The amendments made by
6 this section apply to articles entered, or withdrawn from
7 warehouse for consumption, on or after January 1, 1995.

8 **Subtitle C—Conforming** 9 **Amendments**

10 **SEC. 621. CONFORMING AMENDMENTS.**

11 (a) TRADE LAWS.—

12 (1) Section 1317(a)(1) of the Omnibus Trade
13 and Competitiveness Act of 1988 (19 U.S.C.
14 1677k(a)(1)) is amended—

15 (A) by inserting “(A)” after “(1)”;

16 (B) by striking “General Agreement on
17 Tariffs and Trade” and inserting “GATT
18 1994”; and

19 (C) by adding at the end the following:

20 “(B) The term ‘GATT 1994’ has the meaning
21 given that term in section 2(1)(B) of the Uruguay
22 Round Agreements Act.”.

23 (2) Section 212(c)(4) of the Caribbean Basin
24 Economic Recovery Act (19 U.S.C. 2702(c)(4)) is
25 amended by striking “General” and all that follows

1 through “1979” and inserting “WTO Agreement
2 and the multilateral trade agreements (as such
3 terms are defined in paragraphs (9) and (4), respec-
4 tively, of section 2 of the Uruguay Round Agree-
5 ments Act)”.

6 (3) Section 203(d)(4) of the Andean Trade
7 Preference Act (19 U.S.C. 3202(d)(4)) is amended
8 by striking “General” and all that follows through
9 “1979” and inserting “WTO Agreement and the
10 multilateral trade agreements (as such terms are de-
11 fined in paragraphs (9) and (4), respectively, of sec-
12 tion 2 of the Uruguay Round Agreements Act)”.

13 (4) Section 1106 of the Omnibus Trade and
14 Competitiveness Act of 1988 (19 U.S.C. 2905) is
15 amended—

16 (A) in subsection (a), by striking “the
17 GATT” and inserting “the GATT 1947, or to
18 the WTO Agreement,”;

19 (B) in subsections (b) and (c), by inserting
20 after “the GATT” each place it appears “1947
21 or the WTO Agreement”;

22 (C) by adding at the end the following new
23 subsection:

24 “(e) DEFINITIONS.—For purposes of this section:—

1 “(1) The term ‘GATT 1947’ has the meaning
2 given that term in section 2(1)(A) of the Uruguay
3 Round Agreements Act.

4 “(2) The term ‘WTO Agreement’ means the
5 Agreement Establishing the World Trade Organiza-
6 tion entered into on April 15, 1994 and the multilat-
7 eral trade agreements (as such term is defined in
8 section 2(4) of the Uruguay Round Agreements
9 Act).”; and

10 (D) by inserting after “GENERAL AGREE-
11 MENT ON TARIFFS AND TRADE” in the heading
12 “FOR THE WTO”.

13 (5) Section 1107(a)(3) of the Omnibus Trade
14 and Competitiveness Act of 1988 (19 U.S.C.
15 2906(3)) is amended by striking “the General
16 Agreement on Tariffs and Trade” and inserting “the
17 GATT 1947 (as defined in section 2(1)(A) of the
18 Uruguay Round Agreements Act)”.

19 (6) Section 1378(2) of the Omnibus Trade and
20 Competitiveness Act of 1988 (19 U.S.C. 3107(2)) is
21 amended by striking “the General Agreement on
22 Tariffs and Trade” and inserting “the WTO Agree-
23 ment and the multilateral trade agreements (as such
24 terms are defined in paragraphs (8) and (4), respec-

1 tively, of section 2 of the Uruguay Round Agree-
2 ments Act)”.
3

4 (7) Section 1382 of the Omnibus Trade and
5 Competitiveness Act of 1988 (19 U.S.C. 3111) is
6 amended by striking “the General Agreement on
7 Tariffs and Trade” and inserting “the WTO Agree-
8 ment and the multilateral trade agreements (as such
9 terms are defined in paragraphs (9) and (4), respec-
10 tively, of section 2 of the Uruguay Round Agree-
11 ments Act)”.

12 (8) Section 141(c)(1) of the Trade Act of 1974
13 (19 U.S.C. 2171(c)(1)) is amended—

14 (A) in subparagraph (C) by inserting “all
15 negotiations on any matter considered under
16 the auspices of the World Trade Organization,”
17 after “including”; and

18 (B) in subparagraph (D) by inserting “,
19 including any matter considered under the aus-
20 pices of the World Trade Organization,” after
21 “functions”.

22 (9) Section 301(a)(2)(A) of the Trade Act of
23 1974 (19 U.S.C. 2411(a)(2)(A)) is amended by
24 striking “the Contracting Parties” and all that fol-
25 lows through “Parties,” and inserting “the Dispute
Settlement Body (as defined in section 121(5) of the

1 Uruguay Round Agreements Act) has adopted a re-
2 port.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date on which the
5 WTO Agreement enters into force with respect to the
6 United States.

7 **TITLE VII—REVENUE**
8 **PROVISIONS**

9 **SEC. 700. AMENDMENT OF 1986 CODE AND TABLE OF CON-**
10 **TENTS.**

11 (a) AMENDMENT OF 1986 CODE.—Except as other-
12 wise expressly provided, whenever in this title an amend-
13 ment or repeal is expressed in terms of an amendment
14 to, or repeal of, a section or other provision, the reference
15 shall be considered to be made to a section or other provi-
16 sion of the Internal Revenue Code of 1986.

17 (b) TABLE OF CONTENTS.—

TITLE VII—REVENUE PROVISIONS

Sec. 700. Amendment of 1986 Code and table of contents.

Subtitle A—Withholding Tax Provisions

Sec. 701. Withholding on distributions of Indian casino profits to tribal mem-
bers.

Sec. 702. Voluntary withholding on certain Federal payments and on unemploy-
ment compensation.

Subtitle B—Provisions Relating to Estimated Taxes and Payments and
Deposits of Taxes

Sec. 711. Treatment of subpart F and section 936 income of taxpayers using
annualized method for estimated tax.

Sec. 712. Time for payments and deposits of certain taxes.

Sec. 713. Reduction in rate of interest paid on certain corporate overpayments.

Subtitle C—Earned Income Tax Credit

- Sec. 721. Extension of earned income tax credit to military personnel stationed outside the United States.
- Sec. 722. Certain nonresident aliens ineligible for earned income tax credit.
- Sec. 723. Income of prisoners disregarded in determining earned income tax credit.

Subtitle D—Provisions Relating To Retirement Benefits

- Sec. 731. Treatment of excess pension assets used for retiree health benefits.
- Sec. 732. Rounding rules for cost-of-living adjustments.
- Sec. 733. Increase in inclusion of social security benefits paid to nonresidents.

Subtitle E—Other Provisions

- Sec. 741. Partnership distributions of marketable securities.
- Sec. 742. Taxpayer identification numbers required at birth.
- Sec. 743. Extension of Internal Revenue Service user fees.
- Sec. 744. Modification of substantial understatement penalty for corporations participating in tax shelters.
- Sec. 745. Modification of authority to set terms and conditions for savings bonds.

Subtitle F—Pension Plan Funding and Premiums

- Sec. 750. Short title.

PART I—PENSION PLAN FUNDING

SUBPART A—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

- Sec. 751. Minimum funding requirements.
- Sec. 752. Limitation on changes in current liability assumptions.
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- Sec. 754. Modification of quarterly contribution requirement.
- Sec. 755. Exceptions to excise tax on nondeductible contributions.

SUBPART B—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME
SECURITY ACT OF 1974

- Sec. 761. Minimum funding requirements.
- Sec. 762. Limitation on changes in current liability assumptions.
- Sec. 763. Anticipation of bargained benefit increases.
- Sec. 764. Modification of quarterly contribution requirement.

SUBPART C—OTHER FUNDING PROVISIONS

- Sec. 766. Prohibition on benefit increases where plan sponsor is in bankruptcy.
- Sec. 767. Single sum distributions.
- Sec. 768. Adjustments to lien for missed minimum funding contributions.
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PART II—AMENDMENTS RELATED TO TITLE IV OF THE EMPLOYEE
RETIREMENT INCOME SECURITY ACT OF 1974

- Sec. 771. Reportable events.
- Sec. 772. Certain information required to be furnished to PBGC.
- Sec. 773. Enforcement of minimum funding requirements.
- Sec. 774. Computation of additional PBGC premium.
- Sec. 775. Disclosure to participants.

Sec. 776. Missing participants.

Sec. 777. Modification of maximum guarantee for disability benefits.

Sec. 778. Procedures to facilitate distribution of termination benefits.

PART III—EFFECTIVE DATES

Sec. 781. Effective dates.

1 **Subtitle A—Withholding Tax**
 2 **Provisions**

3 **SEC. 701. WITHHOLDING ON DISTRIBUTIONS OF INDIAN CA-**
 4 **SINO PROFITS TO TRIBAL MEMBERS.**

5 (a) IN GENERAL.—Section 3402 (relating to income
 6 tax collected at source) is amended by inserting after sub-
 7 section (q) the following new subsection:

8 “(r) EXTENSION OF WITHHOLDING TO CERTAIN
 9 TAXABLE PAYMENTS OF INDIAN CASINO PROFITS.—

10 “(1) IN GENERAL.—Every person, including an
 11 Indian tribe, making a payment to a member of an
 12 Indian tribe from the net revenues of any class II
 13 or class III gaming activity conducted or licensed by
 14 such tribe shall deduct and withhold from such pay-
 15 ment a tax in an amount equal to such payment’s
 16 proportionate share of the annualized tax.

17 “(2) EXCEPTION.—The tax imposed by para-
 18 graph (1) shall not apply to any payment to the ex-
 19 tent that the payment, when annualized, does not
 20 exceed an amount equal to the sum of—

1 “(A) the basic standard deduction (as de-
2 fined in section 63(c)) for an individual to
3 whom section 63(c)(2)(C) applies, and

4 “(B) the exemption amount (as defined in
5 section 151(d)).

6 “(3) ANNUALIZED TAX.—For purposes of para-
7 graph (1), the term ‘annualized tax’ means, with re-
8 spect to any payment, the amount of tax which
9 would be imposed by section 1(c) (determined with-
10 out regard to any rate of tax in excess of 31 per-
11 cent) on an amount of taxable income equal to the
12 excess of—

13 “(A) the annualized amount of such pay-
14 ment, over

15 “(B) the amount determined under para-
16 graph (2).

17 “(4) CLASSES OF GAMING ACTIVITIES, ETC.—
18 For purposes of this subsection, terms used in para-
19 graph (1) which are defined in section 4 of the In-
20 dian Gaming Regulatory Act (25 U.S.C. 2701 et
21 seq.), as in effect on the date of the enactment of
22 this subsection, shall have the respective meanings
23 given such terms by such section.

1 “(5) ANNUALIZATION.—Payments shall be
2 placed on an annualized basis under regulations pre-
3 scribed by the Secretary.

4 “(6) ALTERNATE WITHHOLDING PROCE-
5 DURES.—At the election of an Indian tribe, the tax
6 imposed by this subsection on any payment made by
7 such tribe shall be determined in accordance with
8 such tables or computational procedures as may be
9 specified in regulations prescribed by the Secretary
10 (in lieu of in accordance with paragraphs (2) and
11 (3)).

12 “(7) COORDINATION WITH OTHER SECTIONS.—
13 For purposes of this chapter and so much of subtitle
14 F as relates to this chapter, payments to any person
15 which are subject to withholding under this sub-
16 section shall be treated as if they were wages paid
17 by an employer to an employee.”

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to payments made after December
20 31, 1994.

1 **SEC. 702. VOLUNTARY WITHHOLDING ON CERTAIN FED-**
2 **ERAL PAYMENTS AND ON UNEMPLOYMENT**
3 **COMPENSATION.**

4 (a) IN GENERAL.—Subsection (p) of section 3402
5 (relating to voluntary withholding agreements) is amended
6 to read as follows:

7 “(p) VOLUNTARY WITHHOLDING AGREEMENTS.—

8 “(1) CERTAIN FEDERAL PAYMENTS.—

9 “(A) IN GENERAL.—If, at the time a speci-
10 fied Federal payment is made to any person, a
11 request by such person is in effect that such
12 payment be subject to withholding under this
13 chapter, then for purposes of this chapter and
14 so much of subtitle F as relates to this chapter,
15 such payment shall be treated as if it were a
16 payment of wages by an employer to an em-
17 ployee.

18 “(B) AMOUNT WITHHELD.—The amount
19 to be deducted and withheld under this chapter
20 from any payment to which any request under
21 subparagraph (A) applies shall be an amount
22 equal to the percentage of such payment speci-
23 fied in such request. Such a request shall apply
24 to any payment only if the percentage specified
25 is 7, 15, 28, or 31 percent or such other per-

1 percentage as is permitted under regulations pre-
2 scribed by the Secretary.

3 “(C) SPECIFIED FEDERAL PAYMENTS.—
4 For purposes of this paragraph, the term ‘spec-
5 ified Federal payment’ means—

6 “(i) any payment of a social security
7 benefit (as defined in section 86(d)),

8 “(ii) any payment referred to in the
9 second sentence of section 451(d) which is
10 treated as insurance proceeds,

11 “(iii) any amount which is includible
12 in gross income under section 77(a), and

13 “(iv) any other payment made pursu-
14 ant to Federal law which is specified by
15 the Secretary for purposes of this para-
16 graph.

17 “(D) REQUESTS FOR WITHHOLDING.—
18 Rules similar to the rules that apply to annu-
19 ities under subsection (o)(4) shall apply to re-
20 quests under this paragraph and paragraph (2).

21 “(2) VOLUNTARY WITHHOLDING ON UNEM-
22 EMPLOYMENT BENEFITS.—If, at the time a payment of
23 unemployment compensation (as defined in section
24 85(b)) is made to any person, a request by such per-
25 son is in effect that such payment be subject to

1 withholding under this chapter, then for purposes of
2 this chapter and so much of subtitle F as relates to
3 this chapter, such payment shall be treated as if it
4 were a payment of wages by an employer to an em-
5 ployee. The amount to be deducted and withheld
6 under this chapter from any payment to which any
7 request under this paragraph applies shall be an
8 amount equal to 15 percent of such payment.

9 “(3) AUTHORITY FOR OTHER VOLUNTARY
10 WITHHOLDING.—The Secretary is authorized by reg-
11 ulations to provide for withholding—

12 “(A) from remuneration for services per-
13 formed by an employee for the employee’s em-
14 ployer which (without regard to this paragraph)
15 does not constitute wages, and

16 “(B) from any other type of payment with
17 respect to which the Secretary finds that with-
18 holding would be appropriate under the provi-
19 sions of this chapter,

20 if the employer and employee, or the person making
21 and the person receiving such other type of payment,
22 agree to such withholding. Such agreement shall be
23 in such form and manner as the Secretary may by
24 regulations prescribe. For purposes of this chapter
25 (and so much of subtitle F as relates to this chap-

1 ter), remuneration or other payments with respect to
2 which such agreement is made shall be treated as if
3 they were wages paid by an employer to an employee
4 to the extent that such remuneration is paid or other
5 payments are made during the period for which the
6 agreement is in effect.”

7 (b) STATE LAW MUST PERMIT VOLUNTARY WITH-
8 HOLDING OF FEDERAL INCOME TAX FROM UNEMPLOY-
9 MENT COMPENSATION.—Section 3304(a) is amended by
10 striking “and” at the end of paragraph (17), by redesignig-
11 nating paragraph (18) as paragraph (19), and by insert-
12 ing after paragraph (17) the following new paragraph:

13 “(18) Federal individual income tax from un-
14 employment compensation is to be deducted and
15 withheld if an individual receiving such compensa-
16 tion voluntarily requests such deduction and with-
17 holding; and”.

18 (c) WITHHOLDING FROM UNEMPLOYMENT COM-
19 PENSATION OF FEDERAL, STATE, AND LOCAL INCOME
20 TAXES PERMITTED.—

21 (1) Subparagraph (C) of section 3304(a)(4) is
22 amended by inserting after “health insurance” the
23 following: “, or the withholding of Federal, State, or
24 local individual income tax,”.

1 (2) Subsection (f) of section 3306 is amended
2 by redesignating paragraphs (3) and (4) as para-
3 graphs (4) and (5), respectively, and by inserting
4 after paragraph (2) the following new paragraph:

5 “(3) nothing in this subsection shall be con-
6 strued to prohibit deducting any amount from unem-
7 ployment compensation otherwise payable to an indi-
8 vidual and using the amount so deducted to pay for
9 health insurance, or the withholding of Federal,
10 State, or local individual income tax, if the individ-
11 ual elected to have such deduction made and such
12 deduction was made under a program approved by
13 the Secretary of Labor;”.

14 (3) Paragraph (5) of section 303(a) of the So-
15 cial Security Act is amended by inserting after
16 “health insurance” the following: “, or the withhold-
17 ing of Federal, State, or local individual income
18 tax;”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to payments made after December
21 31, 1996.

1 **Subtitle B—Provisions Relating to**
2 **Estimated Taxes and Payments**
3 **and Deposits of Taxes**

4 **SEC. 711. TREATMENT OF SUBPART F AND SECTION 936 IN-**
5 **COME OF TAXPAYERS USING ANNUALIZED**
6 **METHOD FOR ESTIMATED TAX.**

7 (a) CORPORATIONS.—Section 6655(e) (relating to
8 lower required installment where annualized income in-
9 stallment is less) is amended by adding at the end the
10 following new paragraph:

11 “(4) TREATMENT OF SUBPART F AND SECTION
12 936 INCOME.—

13 “(A) IN GENERAL.—Any amounts required
14 to be included in gross income under section
15 936(h) or 951(a) (and credits properly allocable
16 thereto) shall be taken into account in comput-
17 ing any annualized income installment under
18 paragraph (2) in a manner similar to the man-
19 ner under which partnership income inclusions
20 (and credits properly allocable thereto) are
21 taken into account.

22 “(B) PRIOR YEAR SAFE HARBOR.—

23 “(i) IN GENERAL.—If a taxpayer
24 elects to have this subparagraph apply for
25 any taxable year—

1 “(I) subparagraph (A) shall not
2 apply, and

3 “(II) for purposes of computing
4 any annualized income installment for
5 such taxable year, the taxpayer shall
6 be treated as having received ratably
7 during such taxable year items of in-
8 come and credit described in subpara-
9 graph (A) in an amount equal to 115
10 percent of the amount of such items
11 shown on the return of the taxpayer
12 for the preceding taxable year (the
13 second preceding taxable year in the
14 case of the first and second required
15 installments for such taxable year).

16 “(ii) SPECIAL RULE FOR
17 NONCONTROLLING SHAREHOLDER.—

18 “(I) IN GENERAL.—If a taxpayer
19 making the election under clause (i) is
20 a noncontrolling shareholder of a cor-
21 poration, clause (i)(II) shall be ap-
22 plied with respect to items of such
23 corporation by substituting ‘100 per-
24 cent’ for ‘115 percent’.

1 “(II) NONCONTROLLING SHARE-
2 HOLDER.—For purposes of subclause
3 (I), the term ‘noncontrolling share-
4 holder’ means, with respect to any
5 corporation, a shareholder which (as
6 of the beginning of the taxable year
7 for which the installment is being
8 made) does not own (within the mean-
9 ing of section 958(a)), and is not
10 treated as owning (within the meaning
11 of section 958(b)), more than 50 per-
12 cent (by vote or value) of the stock in
13 the corporation.”

14 (b) INDIVIDUALS.—Section 6654(d)(2) (relating to
15 lower required installment where annualized income in-
16 stallment is less) is amended by adding at the end the
17 following new subparagraph:

18 “(D) TREATMENT OF SUBPART F AND
19 SECTION 936 INCOME.—

20 “(i) IN GENERAL.—Any amounts re-
21 quired to be included in gross income
22 under section 936(h) or 951(a) (and cred-
23 its properly allocable thereto) shall be
24 taken into account in computing any
25 annualized income installment under sub-

1 paragraph (B) in a manner similar to the
2 manner under which partnership income
3 inclusions (and credits properly allocable
4 thereto) are taken into account.

5 “(ii) PRIOR YEAR SAFE HARBOR.—If
6 a taxpayer elects to have this clause apply
7 to any taxable year—

8 “(I) clause (i) shall not apply,
9 and

10 “(II) for purposes of computing
11 any annualized income installment for
12 such taxable year, the taxpayer shall
13 be treated as having received ratably
14 during such taxable year items of in-
15 come and credit described in clause (i)
16 in an amount equal to the amount of
17 such items shown on the return of the
18 taxpayer for the preceding taxable
19 year (the second preceding taxable
20 year in the case of the first and sec-
21 ond required installments for such
22 taxable year).”

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply for purposes of determining under-

1 payments of estimated tax for taxable years beginning
2 after December 31, 1994.

3 **SEC. 712. TIME FOR PAYMENTS AND DEPOSITS OF CERTAIN**
4 **TAXES.**

5 (a) DEPOSITS REQUIRED FOR SEMIMONTHLY PERI-
6 ODS.—Subsection (f) of section 6302 (relating to collec-
7 tion authority) is amended to read as follows:

8 “(f) TIME FOR DEPOSIT OF CERTAIN EXCISE
9 TAXES.—

10 “(1) GENERAL RULE.—Except as otherwise
11 provided in this subsection and subsection (e), if any
12 person is required under regulations to make depos-
13 its of taxes under subtitle D with respect to semi-
14 monthly periods, such person shall make deposits of
15 such taxes for the period beginning on September 16
16 and ending on September 26 not later than Septem-
17 ber 29. In the case of taxes imposed by sections
18 4261 and 4271, this paragraph shall not apply to
19 periods before January 1, 1997.

20 “(2) TAXES ON OZONE DEPLETING CHEMI-
21 CALS.—If any person is required under regulations
22 to make deposits of taxes under subchapter D of
23 chapter 38 with respect to semimonthly periods, in
24 lieu of paragraph (1), such person shall make depos-
25 its of such taxes for—

1 “(A) the second semimonthly period in Au-
2 gust, and

3 “(B) the period beginning on September 1
4 and ending on September 11,
5 not later than September 29.

6 “(3) TAXPAYERS NOT REQUIRED TO USE ELEC-
7 TRONIC FUNDS TRANSFER.—In the case of deposits
8 not required to be made by electronic funds transfer,
9 paragraphs (1) and (2) shall be applied by substitut-
10 ing ‘September 25’ for ‘September 26’, ‘September
11 10’ for ‘September 11’, and ‘September 28’ for ‘Sep-
12 tember 29’.

13 “(4) SPECIAL RULE WHERE DUE DATE ON SAT-
14 URDAY OR SUNDAY.—If, but for this paragraph, the
15 due date under paragraph (1), (2), or (3) would fall
16 on a Saturday or Sunday, such due date shall be
17 deemed to be—

18 “(A) in the case of Saturday, the preceding
19 day, and

20 “(B) in the case of Sunday, the following
21 day.”

22 (b) TAXES ON DISTILLED SPIRITS, WINES, AND
23 BEER.—

24 (1) Subsection (d) of section 5061 is amended
25 by redesignating paragraph (4) as paragraph (5)

1 and by inserting after paragraph (3) the following
2 new paragraph:

3 “(4) SPECIAL RULE FOR TAX DUE IN SEPTEMBER.—
4

5 “(A) IN GENERAL.—Notwithstanding the
6 preceding provisions of this subsection, the
7 taxes on distilled spirits, wines, and beer for the
8 period beginning on September 16 and ending
9 on September 26 shall be paid not later than
10 September 29.

11 “(B) SAFE HARBOR.—The requirement of
12 subparagraph (A) shall be treated as met if the
13 amount paid not later than September 29 is not
14 less than $1\frac{1}{15}$ of the taxes on distilled spirits,
15 wines, and beer for the period beginning on
16 September 1 and ending on September 15.

17 “(C) TAXPAYERS NOT REQUIRED TO USE
18 ELECTRONIC FUNDS TRANSFER.—In the case of
19 payments not required to be made by electronic
20 funds transfer, subparagraphs (A) and (B)
21 shall be applied by substituting ‘September 25’
22 for ‘September 26’, ‘September 28’ for ‘Sep-
23 tember 29’, and ‘ $\frac{2}{3}$ ’ for ‘ $1\frac{1}{15}$.’”

24 (2) Section 5061(d)(5), as redesignated by
25 paragraph (1), is amended—

1 (A) by inserting “(or the immediately fol-
2 lowing day where the due date described in
3 paragraph (4) falls on a Sunday)” before the
4 period at the end, and

5 (B) by striking “14TH DAY” in the heading
6 and inserting “DUE DATE”.

7 (c) TOBACCO PRODUCTS AND CIGARETTE PAPERS
8 AND TUBES.—

9 (1) Paragraph (2) of section 5703(b) is amend-
10 ed by redesignating subparagraph (D) as subpara-
11 graph (E) and by inserting after subparagraph (C)
12 the following new subparagraph:

13 “(D) SPECIAL RULE FOR TAX DUE IN SEP-
14 TEMBER.—

15 “(i) IN GENERAL.—Notwithstanding
16 the preceding provisions of this paragraph,
17 the taxes on tobacco products and cigarette
18 papers and tubes for the period beginning
19 on September 16 and ending on September
20 26 shall be paid not later than September
21 29.

22 “(ii) SAFE HARBOR.—The require-
23 ment of clause (i) shall be treated as met
24 if the amount paid not later than Septem-
25 ber 29 is not less than $1\frac{1}{15}$ of the taxes

1 on tobacco products and cigarette papers
2 and tubes for the period beginning on Sep-
3 tember 1 and ending on September 15.

4 “(iii) TAXPAYERS NOT REQUIRED TO
5 USE ELECTRONIC FUNDS TRANSFER.—In
6 the case of payments not required to be
7 made by electronic funds transfer, clauses
8 (i) and (ii) shall be applied by substituting
9 ‘September 25’ for ‘September 26’, ‘Sep-
10 tember 28’ for ‘September 29’, and ‘ $\frac{2}{3}$ ’ for
11 ‘ $\frac{11}{15}$ ’.”

12 (2) Section 5703(b)(2)(E), as redesignated by
13 paragraph (1), is amended—

14 (A) by inserting “(or the immediately fol-
15 lowing day where the due date described in sub-
16 paragraph (D) falls on a Sunday)” before the
17 period at the end, and

18 (B) by striking “14TH DAY” in the heading
19 and inserting “DUE DATE”.

20 (d) COMMUNICATION SERVICES AND AIRLINE TICK-
21 ETS.—Subsection (e) of section 6302 is amended to read
22 as follows:

23 “(e) TIME FOR DEPOSIT OF TAXES ON COMMUNICA-
24 TIONS SERVICES AND AIRLINE TICKETS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), if, under regulations prescribed by the
3 Secretary, a person is required to make deposits of
4 any tax imposed by section 4251 or subsection (a)
5 or (b) of section 4261 with respect to amounts con-
6 sidered collected by such person during any semi-
7 monthly period, such deposit shall be made not later
8 than the 3rd day (not including Saturdays, Sundays,
9 or legal holidays) after the close of the 1st week of
10 the 2nd semimonthly period following the period to
11 which such amounts relate.

12 “(2) SPECIAL RULE FOR TAX DUE IN SEPTEMBER.—
13

14 “(A) AMOUNTS CONSIDERED COL-
15 LECTED.—In the case of a person required to
16 make deposits of the tax imposed by—

17 “(i) section 4251, or

18 “(ii) effective on January 1, 1997,
19 section 4261 or 4271,

20 with respect to amounts considered collected by
21 such person during any semimonthly period, the
22 amount of such tax included in bills rendered or
23 tickets sold during the period beginning on Sep-
24 tember 1 and ending on September 11 shall be
25 deposited not later than September 29.

1 “(B) SPECIAL RULE WHERE SEPTEMBER
2 29 IS ON SATURDAY OR SUNDAY.—If September
3 29 falls on a Saturday or Sunday, the due date
4 under subparagraph (A) shall be—

5 “(i) in the case of Saturday, the pre-
6 ceding day, and

7 “(ii) in the case of Sunday, the follow-
8 ing day.

9 “(C) TAXPAYERS NOT REQUIRED TO USE
10 ELECTRONIC FUNDS TRANSFER.—In the case of
11 deposits not required to be made by electronic
12 funds transfer, subparagraphs (A) and (B)
13 shall be applied by substituting ‘September 10’
14 for ‘September 11’ and ‘September 28’ for
15 ‘September 29.’”

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on January 1, 1995.

18 **SEC. 713. REDUCTION IN RATE OF INTEREST PAID ON CER-**
19 **TAIN CORPORATE OVERPAYMENTS.**

20 (a) IN GENERAL.—Paragraph (1) of section 6621(a)
21 (defining overpayment rate) is amended by adding at the
22 end the following new flush sentence:

23 “To the extent that an overpayment of tax by a cor-
24 poration for any taxable period (as defined in sub-
25 section (c)(3)) exceeds \$10,000, subparagraph (B)

1 shall be applied by substituting ‘0.5 percentage
2 point’ for ‘2 percentage points.’”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply for purposes of determining inter-
5 est for periods after December 31, 1994.

6 **Subtitle C—Earned Income Tax**
7 **Credit**

8 **SEC. 721. EXTENSION OF EARNED INCOME TAX CREDIT TO**
9 **MILITARY PERSONNEL STATIONED OUTSIDE**
10 **THE UNITED STATES.**

11 (a) IN GENERAL.—Subsection (c) of section 32 (re-
12 lating to earned income credit) is amended by adding at
13 the end the following new paragraph:

14 “(4) TREATMENT OF MILITARY PERSONNEL
15 STATIONED OUTSIDE THE UNITED STATES.—For
16 purposes of paragraphs (1)(A)(ii)(I) and (3)(E), the
17 principal place of abode of a member of the Armed
18 Forces of the United States shall be treated as in
19 the United States during any period during which
20 such member is stationed outside the United States
21 while serving on extended active duty (as defined in
22 section 1034(h)(3)) with the Armed Forces of the
23 United States.”

24 (b) REPORTING OF MILITARY EARNED INCOME.—
25 Subsection (a) of section 6051 (relating to receipts for em-

1 ployees) is amended by striking “and” at the end of para-
2 graph (8), by striking the period at the end of paragraph
3 (9) and by inserting “, and”, and by inserting after para-
4 graph (9) the following new paragraph:

5 “(10) in the case of an employee who is a mem-
6 ber of the Armed Forces of the United States, such
7 employee’s earned income as determined for pur-
8 poses of section 32 (relating to earned income cred-
9 it).”

10 (c) ADVANCE PAYMENT OF EARNED INCOME CREDIT
11 BASED ON MILITARY EARNED INCOME.—Paragraph (1)
12 of section 3507(c) (defining earned income advance
13 amount) is amended by adding at the end the following
14 new sentence:

15 “In the case of an employee who is a member of the
16 Armed Forces of the United States, the earned in-
17 come advance amount shall be determined by taking
18 into account such employee’s earned income as de-
19 termined for purposes of section 32.”

20 (d) EFFECTIVE DATES.—

21 (1) SUBSECTION (a).—The amendment made
22 by subsection (a) shall apply to taxable years begin-
23 ning after December 31, 1994.

1 (2) SUBSECTIONS (b) AND (c).—The amend-
2 ments made by subsections (b) and (c) shall apply
3 to remuneration paid after December 31, 1994.

4 **SEC. 722. CERTAIN NONRESIDENT ALIENS INELIGIBLE FOR**
5 **EARNED INCOME TAX CREDIT.**

6 (a) IN GENERAL.—Paragraph (1) of section 32(c)
7 (defining eligible individual) is amended by adding at the
8 end the following new subparagraph:

9 “(E) LIMITATION ON ELIGIBILITY OF NON-
10 RESIDENT ALIENS.—The term ‘eligible individ-
11 ual’ shall not include any individual who is a
12 nonresident alien individual for any portion of
13 the taxable year unless such individual is treat-
14 ed for such taxable year as a resident of the
15 United States for purposes of this chapter by
16 reason of an election under subsection (g) or
17 (h) of section 6013.”

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to taxable years beginning after
20 December 31, 1994.

21 **SEC. 723. INCOME OF PRISONERS DISREGARDED IN DETER-**
22 **MINING EARNED INCOME TAX CREDIT.**

23 (a) IN GENERAL.—Subparagraph (B) of section
24 32(c)(2) (defining earned income) is amended by striking
25 “and” at the end of clause (ii), by striking the period at

1 the end of clause (iii) and inserting “, and”, and by adding
2 at the end the following new clause:

3 “(iv) no amount received for services
4 provided by an individual while the individ-
5 ual is an inmate at a penal institution shall
6 be taken into account.”

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to taxable years beginning after
9 December 31, 1993.

10 **Subtitle D—Provisions Relating To** 11 **Retirement Benefits**

12 **SEC. 731. TREATMENT OF EXCESS PENSION ASSETS USED** 13 **FOR RETIREE HEALTH BENEFITS.**

14 (a) 5-YEAR EXTENSION.—Paragraph (5) of section
15 420(b) (defining qualified transfer) is amended by striking
16 “1995” and inserting “2000”.

17 (b) MINIMUM BENEFIT REQUIREMENTS.—Para-
18 graph (3) of section 420(c) (relating to requirements of
19 plans transferring assets) is amended to read as follows:

20 “(3) MAINTENANCE OF BENEFIT REQUIRE-
21 MENTS.—

22 “(A) IN GENERAL.—The requirements of
23 this paragraph are met if each group health
24 plan or arrangement under which applicable
25 health benefits are provided provides that the

1 applicable health benefits provided by the em-
2 ployer during each taxable year during the ben-
3 efit maintenance period are substantially the
4 same as the applicable health benefits provided
5 by the employer during the taxable year imme-
6 diately preceding the taxable year of the quali-
7 fied transfer.

8 “(B) ELECTION TO APPLY SEPARATELY.—

9 An employer may elect to have this paragraph
10 applied separately with respect to individuals el-
11 igible for benefits under title XVIII of the So-
12 cial Security Act at any time during the taxable
13 year and with respect to individuals not so eligi-
14 ble.

15 “(C) BENEFIT MAINTENANCE PERIOD.—

16 For purposes of this paragraph, the term ‘bene-
17 fit maintenance period’ means the period of 5
18 taxable years beginning with the taxable year in
19 which the qualified transfer occurs. If a taxable
20 year is in 2 or more benefit maintenance peri-
21 ods, this paragraph shall be applied by taking
22 into account the highest level of benefits re-
23 quired to be provided under subparagraph (A)
24 for such taxable year.”

25 (c) CONFORMING AMENDMENTS.—

1 (1) Clause (iii) of section 420(b)(1)(C) is
2 amended by striking “cost” and inserting “benefits”.

3 (2) Subparagraph (B) of section 420(e)(1) is
4 amended to read as follows:

5 “(B) REDUCTIONS FOR AMOUNTS PRE-
6 VIOUSLY SET ASIDE.—The amount determined
7 under subparagraph (A) shall be reduced by the
8 amount which bears the same ratio to such
9 amount as—

10 “(i) the value (as of the close of the
11 plan year preceding the year of the quali-
12 fied transfer) of the assets in all health
13 benefits accounts or welfare benefit funds
14 (as defined in section 419(e)(1)) set aside
15 to pay for the qualified current retiree
16 health liability, bears to

17 “(ii) the present value of the qualified
18 current retiree health liabilities for all plan
19 years (determined without regard to this
20 subparagraph).”

21 (3) Subparagraph (D) of section 420(e)(1) is
22 amended by striking “or in calculating applicable
23 employer cost under subsection (c)(3)(B)” and in-
24 serting “and shall not be subject to the minimum
25 benefit requirements of subsection (c)(3)”.

1 (4)(A) Section 101(e)(3) of the Employee Re-
2 tirement Income Security Act of 1974 (29 U.S.C.
3 1021(e)(3)) is amended by striking “1991” and in-
4 serting “1995”.

5 (B) Section 403(c)(1) of such Act (29 U.S.C.
6 1103(c)(1)) is amended by striking “1991” and in-
7 serting “1995”.

8 (C) Paragraph (13) of section 408(b) of such
9 Act (29 U.S.C. 1108(b)(13)) is amended—

10 (i) by striking “1996” and inserting
11 “2001”, and

12 (ii) by striking “1991” and inserting
13 “1995”.

14 (d) EFFECTIVE DATES.—

15 (1) EXTENSION.—The amendments made by
16 subsections (a) and (c)(3) shall apply to taxable
17 years beginning after December 31, 1995.

18 (2) BENEFITS.—The amendments made by
19 subsections (b) and (c)(1) and (2) shall apply to
20 qualified transfers occurring after the date of the
21 enactment of this Act.

1 **SEC. 732. ROUNDING RULES FOR COST-OF-LIVING ADJUST-**
2 **MENTS.**

3 (a) COST-OF-LIVING ADJUSTMENT FOR COMPENSA-
4 TION LIMIT.—Section 401(a)(17)(B) is amended to read
5 as follows:

6 “(B) COST-OF-LIVING ADJUSTMENT.—The
7 Secretary shall adjust annually the \$150,000
8 amount in subparagraph (A) for increases in
9 the cost-of-living at the same time and in the
10 same manner as adjustments under section
11 415(d); except that the base period shall be the
12 calendar quarter beginning October 1, 1993,
13 and any increase which is not a multiple of
14 \$10,000 shall be rounded to the next lowest
15 multiple of \$10,000.”

16 (b) COST-OF-LIVING ADJUSTMENT FOR MAXIMUM
17 DEFINED BENEFIT AMOUNT AND MAXIMUM ANNUAL AD-
18 DITION.—

19 (1) IN GENERAL.—Section 415(d) is amended
20 to read as follows:

21 “(d) COST-OF-LIVING ADJUSTMENTS.—

22 “(1) IN GENERAL.—The Secretary shall adjust
23 annually—

24 “(A) the \$90,000 amount in subsection
25 (b)(1)(A),

1 “(B) in the case of a participant who sepa-
2 rated from service, the amount taken into ac-
3 count under subsection (b)(1)(B), and

4 “(C) the \$30,000 amount in subsection
5 (c)(1)(A),

6 for increases in the cost-of-living in accordance with
7 regulations prescribed by the Secretary.

8 “(2) METHOD.—The regulations prescribed
9 under paragraph (1) shall provide for—

10 “(A) an adjustment with respect to any
11 calendar year based on the increase in the ap-
12 plicable index for the calendar quarter ending
13 September 30 of the preceding calendar year
14 over such index for the base period, and

15 “(B) adjustment procedures which are
16 similar to the procedures used to adjust benefit
17 amounts under section 215(i)(2)(A) of the So-
18 cial Security Act.

19 “(3) BASE PERIOD.—For purposes of para-
20 graph (2)—

21 “(A) \$90,000 AMOUNT.—The base period
22 taken into account for purposes of paragraph
23 (1)(A) is the calendar quarter beginning Octo-
24 ber 1, 1986.

1 “(B) SEPARATIONS AFTER DECEMBER 31,
2 1994.—The base period taken into account for
3 purposes of paragraph (1)(B) with respect to
4 individuals separating from service with the em-
5 ployer after December 31, 1994, is the calendar
6 quarter beginning July 1 of the calendar year
7 preceding the calendar year in which such sepa-
8 ration occurs.

9 “(C) SEPARATIONS BEFORE JANUARY 1,
10 1995.—The base period taken into account for
11 purposes of paragraph (1)(B) with respect to
12 individuals separating from service with the em-
13 ployer before January 1, 1995, is the calendar
14 quarter beginning October 1 of the calendar
15 year preceding the calendar year in which such
16 separation occurs.

17 “(D) \$30,000 AMOUNT.—The base period
18 taken into account for purposes of paragraph
19 (1)(C) is the calendar quarter beginning Octo-
20 ber 1, 1993.

21 “(4) ROUNDING.—Any increase under subpara-
22 graph (A) or (C) of paragraph (1) which is not a
23 multiple of \$5,000 shall be rounded to the next low-
24 est multiple of \$5,000.”

1 (2) CONFORMING AMENDMENT.—Section
2 415(c)(1)(A) is amended by striking “(or, if greater,
3 $\frac{1}{4}$ of the dollar limitation in effect under subsection
4 (b)(1)(A))”.

5 (c) COST-OF-LIVING ADJUSTMENT FOR MAXIMUM
6 SALARY DEFERRAL.—Section 402(g)(5) is amended by
7 inserting before the period “; except that any increase
8 under this paragraph which is not a multiple of \$500 shall
9 be rounded to the next lowest multiple of \$500”.

10 (d) COST-OF-LIVING ADJUSTMENT FOR ELIGIBILITY
11 FOR SIMPLIFIED EMPLOYEE PENSIONS.—Section
12 408(k)(8) is amended by inserting before the period “; ex-
13 cept that any increase in the \$300 amount which is not
14 a multiple of \$50 shall be rounded to the next lowest mul-
15 tiple of \$50”.

16 (e) EFFECTIVE DATES.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), the amendments made by this section
19 shall apply to years beginning after December 31,
20 1994.

21 (2) ROUNDING NOT TO RESULT IN DE-
22 CREASES.—The amendments made by this section
23 providing for the rounding of indexed amounts shall
24 not apply to any year to the extent the rounding
25 would require the indexed amount to be reduced

1 below the amount in effect for years beginning in
2 1994.

3 **SEC. 733. INCREASE IN INCLUSION OF SOCIAL SECURITY**
4 **BENEFITS PAID TO NONRESIDENTS.**

5 (a) IN GENERAL.—Subparagraph (A) of section
6 871(a)(3) (relating to taxation of Social Security benefits)
7 is amended by striking “one-half” and inserting “85 per-
8 cent”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to benefits paid after December
11 31, 1994, in taxable years ending after such date.

12 **Subtitle E—Other Provisions**

13 **SEC. 741. PARTNERSHIP DISTRIBUTIONS OF MARKETABLE**
14 **SECURITIES.**

15 (a) IN GENERAL.—Section 731 (relating to extent of
16 recognition of gain or loss on distribution) is amended by
17 redesignating subsection (c) as subsection (d) and by in-
18 serting after subsection (b) the following new subsection:

19 “(c) TREATMENT OF MARKETABLE SECURITIES.—

20 “(1) IN GENERAL.—For purposes of subsection
21 (a)(1) and section 737—

22 “(A) the term ‘money’ includes marketable
23 securities, and

1 “(B) such securities shall be taken into ac-
2 count at their fair market value as of the date
3 of the distribution.

4 “(2) MARKETABLE SECURITIES.—For purposes
5 of this subsection:

6 “(A) IN GENERAL.—The term ‘marketable
7 securities’ means financial instruments and for-
8 eign currencies which are, as of the date of the
9 distribution, actively traded (within the mean-
10 ing of section 1092(d)(1)).

11 “(B) OTHER PROPERTY.—Such term in-
12 cludes—

13 “(i) any interest in—

14 “(I) a common trust fund, or

15 “(II) a regulated investment
16 company which is offering for sale or
17 has outstanding any redeemable secu-
18 rity (as defined in section 2(a)(32) of
19 the Investment Company Act of 1940)
20 of which it is the issuer,

21 “(ii) any financial instrument which,
22 pursuant to its terms or any other ar-
23 rangement, is readily convertible into, or
24 exchangeable for, money or marketable se-
25 curities,

1 “(iii) any financial instrument the
2 value of which is determined substantially
3 by reference to marketable securities,

4 “(iv) except to the extent provided in
5 regulations prescribed by the Secretary,
6 any interest in a precious metal which, as
7 of the date of the distribution, is actively
8 traded (within the meaning of section
9 1092(d)(1)) unless such metal was pro-
10 duced, used, or held in the active conduct
11 of a trade or business by the partnership,

12 “(v) except as otherwise provided in
13 regulations prescribed by the Secretary, in-
14 terests in any entity if substantially all of
15 the assets of such entity consist (directly
16 or indirectly) of marketable securities,
17 money, or both, and

18 “(vi) to the extent provided in regula-
19 tions prescribed by the Secretary, any in-
20 terest in an entity not described in clause
21 (v) but only to the extent of the value of
22 such interest which is attributable to mar-
23 ketable securities, money, or both.

24 “(C) FINANCIAL INSTRUMENT.—The term
25 ‘financial instrument’ includes stocks and other

1 equity interests, evidences of indebtedness, op-
2 tions, forward or futures contracts, notional
3 principal contracts, and derivatives.

4 “(3) EXCEPTIONS.—

5 “(A) IN GENERAL.—Paragraph (1) shall
6 not apply to the distribution from a partnership
7 of a marketable security to a partner if—

8 “(i) the security was contributed to
9 the partnership by such partner, except to
10 the extent that the value of the distributed
11 security is attributable to marketable secu-
12 rities or money contributed (directly or in-
13 directly) to the entity to which the distrib-
14 uted security relates,

15 “(ii) to the extent provided in regula-
16 tions prescribed by the Secretary, the prop-
17 erty was not a marketable security when
18 acquired by such partnership, or

19 “(iii) such partnership is an invest-
20 ment partnership and such partner is an
21 eligible partner thereof.

22 “(B) LIMITATION ON GAIN RECOGNIZED.—

23 In the case of a distribution of marketable secu-
24 rities to a partner, the amount taken into ac-

1 count under paragraph (1) shall be reduced
2 (but not below zero) by the excess (if any) of—

3 “(i) such partner’s distributive share
4 of the net gain which would be recognized
5 if all of the marketable securities of the
6 same class and issuer as the distributed se-
7 curities held by the partnership were sold
8 (immediately before the transaction to
9 which the distribution relates) by the part-
10 nership for fair market value, over

11 “(ii) such partner’s distributive share
12 of the net gain which is attributable to the
13 marketable securities of the same class and
14 issuer as the distributed securities held by
15 the partnership immediately after the
16 transaction, determined by using the same
17 fair market value as used under clause (i).

18 Under regulations prescribed by the Secretary,
19 all marketable securities held by the partner-
20 ship may be treated as marketable securities of
21 the same class and issuer as the distributed se-
22 curities.

23 “(C) DEFINITIONS RELATING TO INVEST-
24 MENT PARTNERSHIPS.—For purposes of sub-
25 paragraph (A)(iii):

1 “(i) INVESTMENT PARTNERSHIP.—

2 The term ‘investment partnership’ means
3 any partnership which has never been en-
4 gaged in a trade or business and substan-
5 tially all of the assets (by value) of which
6 have always consisted of—

7 “(I) money,

8 “(II) stock in a corporation,

9 “(III) notes, bonds, debentures,
10 or other evidences of indebtedness,

11 “(IV) interest rate, currency, or
12 equity notional principal contracts,

13 “(V) foreign currencies,

14 “(VI) interests in or derivative fi-
15 nancial instruments (including op-
16 tions, forward or futures contracts,
17 short positions, and similar financial
18 instruments) in any asset described in
19 any other subclause of this clause or
20 in any commodity traded on or sub-
21 ject to the rules of a board of trade or
22 commodity exchange,

23 “(VII) other assets specified in
24 regulations prescribed by the Sec-
25 retary, or

1 “(VIII) any combination of the
2 foregoing.

3 “(ii) EXCEPTION FOR CERTAIN AC-
4 TIVITIES.—A partnership shall not be
5 treated as engaged in a trade or business
6 by reason of—

7 “(I) any activity undertaken as
8 an investor, trader, or dealer in any
9 asset described in clause (i), or

10 “(II) any other activity specified
11 in regulations prescribed by the Sec-
12 retary.

13 “(iii) ELIGIBLE PARTNER.—

14 “(I) IN GENERAL.—The term ‘el-
15 igible partner’ means any partner
16 who, before the date of the distribu-
17 tion, did not contribute to the part-
18 nership any property other than as-
19 sets described in clause (i).

20 “(II) EXCEPTION FOR CERTAIN
21 NONRECOGNITION TRANSACTIONS.—
22 The term ‘eligible partner’ shall not
23 include the transferor or transferee in
24 a nonrecognition transaction involving
25 a transfer of any portion of an inter-

1 est in a partnership with respect to
2 which the transferor was not an eligi-
3 ble partner.

4 “(iv) LOOK-THRU OF PARTNERSHIP
5 TIERS.—Except as otherwise provided in
6 regulations prescribed by the Secretary—

7 “(I) a partnership shall be treat-
8 ed as engaged in any trade or busi-
9 ness engaged in by, and as holding
10 (instead of a partnership interest) a
11 proportionate share of the assets of,
12 any other partnership in which the
13 partnership holds a partnership inter-
14 est, and

15 “(II) a partner who contributes
16 to a partnership an interest in an-
17 other partnership shall be treated as
18 contributing a proportionate share of
19 the assets of the other partnership.

20 If the preceding sentence does not apply
21 under such regulations with respect to any
22 interest held by a partnership in another
23 partnership, the interest in such other
24 partnership shall be treated as if it were
25 specified in a subclause of clause (i).

1 “(4) BASIS OF SECURITIES DISTRIBUTED.—

2 “(A) IN GENERAL.—The basis of market-
3 able securities with respect to which gain is rec-
4 ognized by reason of this subsection shall be—

5 “(i) their basis determined under sec-
6 tion 732, increased by

7 “(ii) the amount of such gain.

8 “(B) ALLOCATION OF BASIS INCREASE.—

9 Any increase in basis attributable to the gain
10 described in subparagraph (A)(ii) shall be allo-
11 cated to marketable securities in proportion to
12 their respective amounts of unrealized apprecia-
13 tion before such increase.

14 “(5) SUBSECTION DISREGARDED IN DETERMIN-
15 ING BASIS OF PARTNER’S INTEREST IN PARTNER-
16 SHIP AND OF BASIS OF PARTNERSHIP PROPERTY.—
17 Sections 733 and 734 shall be applied as if no gain
18 were recognized, and no adjustment were made to
19 the basis of property, under this subsection.

20 “(6) CHARACTER OF GAIN RECOGNIZED.—In
21 the case of a distribution of a marketable security
22 which is an unrealized receivable (as defined in sec-
23 tion 751(c)) or an inventory item (as defined in sec-
24 tion 751(d)(2)), any gain recognized under this sub-
25 section shall be treated as ordinary income to the ex-

1 tent of any increase in the basis of such security at-
2 tributable to the gain described in paragraph
3 (4)(A)(ii).

4 “(7) REGULATIONS.—The Secretary shall pre-
5 scribe such regulations as may be necessary or ap-
6 propriate to carry out the purposes of this sub-
7 section, including regulations to prevent the avoid-
8 ance of such purposes.”

9 (b) CONFORMING AMENDMENTS.—

10 (1) The last sentence of section 737(c)(1) is
11 amended to read as follows: “For purposes of deter-
12 mining the basis of the distributed property (other
13 than money), such increase shall be treated as occur-
14 ring immediately before the distribution.”

15 (2) Section 737 is amended by adding at the
16 end the following new subsection:

17 “(e) MARKETABLE SECURITIES TREATED AS
18 MONEY.—

**“For treatment of marketable securities as money
for purposes of this section, see section 731(c).”**

19 (c) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as otherwise pro-
21 vided in this subsection, the amendments made by
22 this section shall apply to distributions after the
23 date of the enactment of this Act.

1 (2) CERTAIN DISTRIBUTIONS BEFORE JANUARY
2 1, 1995.—The amendments made by this section
3 shall not apply to any marketable security distrib-
4 uted before January 1, 1995, by the partnership
5 which held such security on July 27, 1994.

6 (3) DISTRIBUTIONS IN LIQUIDATION OF PART-
7 NER'S INTEREST.—The amendments made by this
8 section shall not apply to the distribution of a mar-
9 ketable security in liquidation of a partner's interest
10 in a partnership if—

11 (A) such liquidation is pursuant to a writ-
12 ten contract which was binding on July 15,
13 1994, and at all times thereafter before the dis-
14 tribution, and

15 (B) such contract provides for the pur-
16 chase of such interest not later than a date cer-
17 tain for—

18 (i) a fixed value of marketable securi-
19 ties that are specified in the contract, or

20 (ii) other property.

21 The preceding sentence shall not apply if the partner
22 has the right to elect that such distribution be made
23 other than in marketable securities.

24 (4) DISTRIBUTIONS IN COMPLETE LIQUIDATION
25 OF PUBLICLY TRADED PARTNERSHIPS.—

1 (A) IN GENERAL.—The amendments made
2 by this section shall not apply to the distribu-
3 tion of a marketable security in a qualified
4 partnership liquidation if—

5 (i) the marketable securities were re-
6 ceived by the partnership in a nonrecogni-
7 tion transaction in exchange for substan-
8 tially all of the assets of the partnership,

9 (ii) the marketable securities are dis-
10 tributed by the partnership within 90 days
11 after their receipt by the partnership, and

12 (iii) the partnership is liquidated be-
13 fore the beginning of the 1st taxable year
14 of the partnership beginning after Decem-
15 ber 31, 1997.

16 (B) QUALIFIED PARTNERSHIP LIQUIDA-
17 TION.—For purposes of subparagraph (A), the
18 term “qualified partnership liquidation”
19 means—

20 (i) a complete liquidation of a publicly
21 traded partnership (as defined in section
22 7704(b) of the Internal Revenue Code of
23 1986) which is an existing partnership (as
24 defined in section 10211(c)(2) of the Reve-
25 nue Act of 1987), and

1 (ii) a complete liquidation of a part-
2 nership which is related to a partnership
3 described in clause (i) if such liquidation is
4 related to a complete liquidation of the
5 partnership described in clause (i).

6 (5) MARKETABLE SECURITIES.—For purposes
7 of this subsection, the term “marketable securities”
8 has the meaning given such term by section 731(c)
9 of the Internal Revenue Code of 1986, as added by
10 this section.

11 **SEC. 742. TAXPAYER IDENTIFICATION NUMBERS REQUIRED**

12 **AT BIRTH.**

13 (a) EARNED INCOME CREDIT.—Clause (i) of section
14 32(c)(3)(D) is amended to read as follows:

15 “(i) IN GENERAL.—The requirements
16 of this subparagraph are met if the tax-
17 payer includes the name, age, and TIN of
18 each qualifying child (without regard to
19 this subparagraph) on the return of tax for
20 the taxable year.”

21 (b) DEPENDENCY EXEMPTION.—Subsection (e) of
22 section 6109 is amended to read as follows:

23 “(e) FURNISHING NUMBER FOR DEPENDENTS.—Any
24 taxpayer who claims an exemption under section 151 for
25 any dependent on a return for any taxable year shall in-

1 clude on such return the identifying number (for purposes
2 of this title) of such dependent.”

3 (c) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 shall apply to returns for taxable years beginning
7 after December 31, 1994.

8 (2) EXCEPTION.—The amendments made by
9 this section shall not apply to—

10 (A) returns for taxable years beginning in
11 1995 with respect to individuals who are born
12 after October 31, 1995, and

13 (B) returns for taxable years beginning in
14 1996 with respect to individuals who are born
15 after November 30, 1996.

16 **SEC. 743. EXTENSION OF INTERNAL REVENUE SERVICE**
17 **USER FEES.**

18 Subsection (c) of section 10511 of the Revenue Act
19 of 1987 (relating to fees for requests for ruling, deter-
20 mination, and similar letters) is amended by striking “Oc-
21 tober 1, 1995” and inserting “October 1, 2000”.

1 **SEC. 744. MODIFICATION OF SUBSTANTIAL UNDERSTATE-**
2 **MENT PENALTY FOR CORPORATIONS PAR-**
3 **TICIPATING IN TAX SHELTERS.**

4 (a) IN GENERAL.—Subparagraph (C) of section
5 6662(d)(2) (relating to special rules in cases involving tax
6 shelters) is amended by redesignating clause (ii) as clause
7 (iii) and by inserting after clause (i) the following new
8 clause:

9 “(ii) SUBPARAGRAPH (B) NOT TO
10 APPLY TO CORPORATIONS.—Subparagraph
11 (B) shall not apply to any item of a cor-
12 poration which is attributable to a tax
13 shelter.”

14 (b) TECHNICAL AMENDMENTS.—

15 (1) Clause (i) of section 6662(d)(2)(C) is
16 amended by striking “In the case of any item” and
17 inserting “In the case of any item of a taxpayer
18 other than a corporation which is”.

19 (2) Clause (iii) of section 6662(d)(2)(C), as re-
20 designated by subsection (a), is amended by striking
21 “clause (i)” and inserting “this subparagraph”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to items related to transactions
24 occurring after the date of the enactment of this Act.

1 **SEC. 745. MODIFICATION OF AUTHORITY TO SET TERMS**
2 **AND CONDITIONS FOR SAVINGS BONDS.**

3 (a) IN GENERAL.—Subsection (b) of section 3105 of
4 title 31, United States Code, is amended to read as fol-
5 lows:

6 “(b)(1) The Secretary may—

7 “(A) fix the investment yield for savings bonds;
8 and

9 “(B) change the investment yield on an out-
10 standing savings bond, except that the yield on a
11 bond for the period held may not be decreased below
12 the minimum yield for the period guaranteed on the
13 date of issue.

14 “(2) The Secretary may prescribe regulations provid-
15 ing that—

16 “(A) owners of savings bonds may keep the
17 bonds after maturity or after a period beyond matu-
18 rity during which the bonds have earned interest and
19 continue to earn interest at rates consistent with
20 paragraph (1) of this subsection; and

21 “(B) savings bonds earning a different rate of
22 interest before the regulations are prescribed shall
23 earn a rate of interest consistent with paragraph
24 (1).”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to bonds issued after October 31,
3 1994.

4 **Subtitle F—Pension Plan Funding**
5 **and Premiums**

6 **SEC. 750. SHORT TITLE.**

7 This subtitle may be cited as the “Retirement Protec-
8 tion Act of 1994”.

9 **PART I—PENSION PLAN FUNDING**

10 **Subpart A—Amendments to the Internal Revenue**

11 **Code of 1986**

12 **SEC. 751. MINIMUM FUNDING REQUIREMENTS.**

13 (a) AMENDMENTS TO ADDITIONAL FUNDING RE-
14 QUIREMENTS FOR SINGLE-EMPLOYER PLANS.—

15 (1) LIMITATIONS ON ADDITIONAL FUNDING RE-
16 QUIREMENT FOR CERTAIN PLANS.—

17 (A) IN GENERAL.—Paragraph (1) of sec-
18 tion 412(l) (relating to additional funding re-
19 quirements for plans which are not multiem-
20 ployer plans) is amended by striking “which has
21 an unfunded current liability” and inserting “to
22 which this subsection applies under paragraph
23 (9)”.

1 (B) PLANS TO WHICH REQUIREMENT AP-
2 PLIES.—Section 412(l) is amended by adding at
3 the end the following new paragraph:

4 “(9) APPLICABILITY OF SUBSECTION.—

5 “(A) IN GENERAL.—Except as provided in
6 paragraph (6)(A), this subsection shall apply to
7 a plan for any plan year if its funded current
8 liability percentage for such year is less than 90
9 percent.

10 “(B) EXCEPTION FOR CERTAIN PLANS AT
11 LEAST 80 PERCENT FUNDED.—Subparagraph
12 (A) shall not apply to a plan for a plan year
13 if—

14 “(i) the funded current liability per-
15 centage for the plan year is at least 80
16 percent, and

17 “(ii) such percentage for each of the
18 2 immediately preceding plan years (or
19 each of the 2d and 3d immediately preced-
20 ing plan years) is at least 90 percent.

21 “(C) FUNDED CURRENT LIABILITY PER-
22 CENTAGE.—For purposes of subparagraphs (A)
23 and (B), the term ‘funded current liability per-
24 centage’ has the meaning given such term by

1 paragraph (8)(B), except that such percentage
2 shall be determined for any plan year—

3 “(i) without regard to paragraph
4 (8)(E), and

5 “(ii) by using the rate of interest
6 which is the highest rate allowable for the
7 plan year under paragraph (7)(C).

8 “(D) TRANSITION RULES.—For purposes
9 of this paragraph:

10 “(i) FUNDED PERCENTAGE FOR
11 YEARS BEFORE 1995.—The funded current
12 liability percentage for any plan year be-
13 ginning before January 1, 1995, shall be
14 treated as not less than 90 percent only if
15 for such plan year the plan met one of the
16 following requirements (as in effect for
17 such year):

18 “(I) The full-funding limitation
19 under subsection (c)(7) for the plan
20 was zero.

21 “(II) The plan had no additional
22 funding requirement under this sub-
23 section (or would have had no such
24 requirement if its funded current li-

1 ability percentage had been deter-
2 mined under subparagraph (C)).

3 “(III) The plan’s additional fund-
4 ing requirement under this subsection
5 did not exceed the lesser of 0.5 per-
6 cent of current liability or \$5,000,000.

7 “(ii) SPECIAL RULE FOR 1995 AND
8 1996.—For purposes of determining wheth-
9 er subparagraph (B) applies to any plan
10 year beginning in 1995 or 1996, a plan
11 shall be treated as meeting the require-
12 ments of subparagraph (B)(ii) if the plan
13 met the requirements of clause (i) of this
14 subparagraph for any two of the plan years
15 beginning in 1992, 1993, and 1994
16 (whether or not consecutive).”

17 (2) RELATIONSHIP OF ADDITIONAL FUNDING
18 REQUIREMENT TO FUNDING STANDARD ACCOUNT
19 CHARGES AND CREDITS.—

20 (A) Clause (ii) of section 412(l)(1)(A) is
21 amended to read as follows:

22 “(ii) the sum of the charges for such
23 plan year under subsection (b)(2), reduced
24 by the sum of the credits for such plan

1 year under subparagraph (B) of subsection
2 (b)(3), plus”.

3 (B) The last sentence in section 412(l)(1)
4 of such Code is amended to read as follows:

5 “Such increase shall not exceed the amount which,
6 after taking into account charges (other than the ad-
7 ditional charge under this subsection) and credits
8 under subsection (b), is necessary to increase the
9 funded current liability percentage (taking into ac-
10 count the expected increase in current liability due
11 to benefits accruing during the plan year) to 100
12 percent.”

13 (3) AMENDMENT TO DEFICIT REDUCTION CON-
14 TRIBUTION.—Paragraph (2) of section 412(l) is
15 amended—

16 (A) by striking “plus” at the end of sub-
17 paragraph (A);

18 (B) by striking the period at the end of
19 subparagraph (B) and inserting “, plus”; and

20 (C) by adding at the end the following new
21 subparagraph:

22 “(C) the expected increase in current li-
23 ability due to benefits accruing during the plan
24 year.”

1 (4) INCREASE IN CURRENT LIABILITY DUE TO
2 CHANGE IN REQUIRED ASSUMPTIONS.—

3 (A) Paragraph (3) of section 412(l) is
4 amended by adding at the end the following
5 new subparagraphs:

6 “(D) SPECIAL RULE FOR REQUIRED
7 CHANGES IN ACTUARIAL ASSUMPTIONS.—

8 “(i) IN GENERAL.—The unfunded old
9 liability amount with respect to any plan
10 for any plan year shall be increased by the
11 amount necessary to amortize the amount
12 of additional unfunded old liability under
13 the plan in equal annual installments over
14 a period of 12 plan years (beginning with
15 the first plan year beginning after Decem-
16 ber 31, 1994).

17 “(ii) ADDITIONAL UNFUNDED OLD LI-
18 ABILITY.—For purposes of clause (i), the
19 term ‘additional unfunded old liability’
20 means the amount (if any) by which—

21 “(I) the current liability of the
22 plan as of the beginning of the first
23 plan year beginning after December
24 31, 1994, valued using the assump-
25 tions required by paragraph (7)(C) as

1 in effect for plan years beginning
2 after December 31, 1994, exceeds

3 “(II) the current liability of the
4 plan as of the beginning of such first
5 plan year, valued using the same as-
6 sumptions used under subclause (I)
7 (other than the assumptions required
8 by paragraph (7)(C)), using the prior
9 interest rate, and using such mortality
10 assumptions as were used to deter-
11 mine current liability for the first plan
12 year beginning after December 31,
13 1992.

14 “(iii) PRIOR INTEREST RATE.—For
15 purposes of clause (ii), the term ‘prior in-
16 terest rate’ means the rate of interest that
17 is the same percentage of the weighted av-
18 erage under subsection (b)(5)(B)(ii)(I) for
19 the first plan year beginning after Decem-
20 ber 31, 1994, as the rate of interest used
21 by the plan to determine current liability
22 for the first plan year beginning after De-
23 cember 31, 1992, is of the weighted aver-
24 age under subsection (b)(5)(B)(ii)(I) for

1 such first plan year beginning after De-
2 cember 31, 1992.

3 “(E) OPTIONAL RULE FOR ADDITIONAL
4 UNFUNDED OLD LIABILITY.—

5 “(i) IN GENERAL.—If an employer
6 makes an election under clause (ii), the ad-
7 ditional unfunded old liability for purposes
8 of subparagraph (D) shall be the amount
9 (if any) by which—

10 “(I) the unfunded current liabil-
11 ity of the plan as of the beginning of
12 the first plan year beginning after De-
13 cember 31, 1994, valued using the as-
14 sumptions required by paragraph
15 (7)(C) as in effect for plan years be-
16 ginning after December 31, 1994, ex-
17 ceeds

18 “(II) the unamortized portion of
19 the unfunded old liability under the
20 plan as of the beginning of the first
21 plan year beginning after December
22 31, 1994.

23 “(ii) ELECTION.—

24 “(I) An employer may irrevocably
25 elect to apply the provisions of this

1 subparagraph as of the beginning of
2 the first plan year beginning after De-
3 cember 31, 1994.

4 “(II) If an election is made under
5 this clause, the increase under para-
6 graph (1) for any plan year beginning
7 after December 31, 1994, and before
8 January 1, 2002, to which this sub-
9 section applies (without regard to this
10 subclause) shall not be less than the
11 increase that would be required under
12 paragraph (1) if the provisions of this
13 title as in effect for the last plan year
14 beginning before January 1, 1995,
15 had remained in effect.”

16 (B) Clause (i) of section 412(l)(4)(B) is
17 amended by inserting “, the unamortized por-
18 tion of the additional unfunded old liability,”
19 after “old liability”.

20 (5) APPLICABLE PERCENTAGE FOR DETERMIN-
21 ING UNFUNDED NEW LIABILITY AMOUNT.—Subpara-
22 graph (C) of section 412(l)(4) is amended—

23 (A) by striking “.25” and inserting “.40”,
24 and

25 (B) by striking “35” and inserting “60”.

1 (6) UNPREDICTABLE CONTINGENT EVENT
2 AMOUNT.—

3 (A) Subparagraph (A) of section 412(l)(5)
4 is amended—

5 (i) by striking “greater of” and insert-
6 ing “greatest of” before clause (i);

7 (ii) by striking “or” at the end of
8 clause (i);

9 (iii) by striking the period at the end
10 of clause (ii) and inserting “, or”; and

11 (iv) by adding after clause (ii) the fol-
12 lowing new clause:

13 “(iii) the additional amount that
14 would be determined under paragraph
15 (4)(A) if the unpredictable contingent
16 event benefit liabilities were included in
17 unfunded new liability notwithstanding
18 paragraph (4)(B)(ii).”

19 (B) Paragraph (5) of section 412(l) is
20 amended by adding at the end the following
21 new subparagraph:

22 “(E) LIMITATION.—The present value of
23 the amounts described in subparagraph (A)
24 with respect to any one event shall not exceed

1 the unpredictable contingent event benefit li-
2 abilities attributable to that event.”

3 (C) Clause (ii) of section 412(m)(4)(D) is
4 amended—

5 (i) by striking “greater of” and insert-
6 ing “greatest of” before subclause (I);

7 (ii) by striking “or” at the end of
8 subclause (I);

9 (iii) by striking the period at the end
10 of subclause (II) and inserting “, or”; and

11 (iv) by adding after subclause (II) the
12 following new clause:

13 “(III) 25 percent of the amount
14 determined under subsection
15 (l)(5)(A)(iii) for the plan year.”

16 (7) REQUIRED INTEREST RATE AND MORTALITY
17 ASSUMPTIONS FOR DETERMINING CURRENT LIABIL-
18 ITY.—

19 (A) IN GENERAL.—Subparagraph (C) of
20 section 412(l)(7) is amended to read as follows:

21 “(C) INTEREST RATE AND MORTALITY AS-
22 SUMPTIONS USED.—Effective for plan years be-
23 ginning after December 31, 1994—

24 “(i) INTEREST RATE.—

1 “(I) IN GENERAL.—The rate of
 2 interest used to determine current li-
 3 ability under this subsection shall be
 4 the rate of interest used under sub-
 5 section (b)(5), except that the highest
 6 rate in the permissible range under
 7 subparagraph (B)(ii) thereof shall not
 8 exceed the specified percentage under
 9 subclause (II) of the weighted average
 10 referred to in such subparagraph.

11 “(II) SPECIFIED PERCENTAGE.—
 12 For purposes of subclause (I), the
 13 specified percentage shall be deter-
 14 mined as follows:

“In the case of plan years be-		The specified percentage is:
ginning in calendar year:		
1995	.....	109
1996	.....	108
1997	.....	107
1998	.....	106
1999 and thereafter	.....	105.

15 “(ii) MORTALITY TABLES.—
 16 “(I) COMMISSIONERS’ STANDARD
 17 TABLE.—In the case of plan years be-
 18 ginning before the first plan year to
 19 which the first tables prescribed under
 20 subclause (II) apply, the mortality
 21 table used in determining current li-
 22 ability under this subsection shall be

1 the table prescribed by the Secretary
2 which is based on the prevailing com-
3 missioners' standard table (described
4 in section 807(d)(5)(A)) used to de-
5 termine reserves for group annuity
6 contracts issued on January 1, 1993.

7 “(II) SECRETARIAL AUTHOR-
8 ITY.—The Secretary may by regula-
9 tion prescribe for plan years beginning
10 after December 31, 1999, mortality
11 tables to be used in determining cur-
12 rent liability under this subsection.
13 Such tables shall be based upon the
14 actual experience of pension plans and
15 projected trends in such experience.
16 In prescribing such tables, the Sec-
17 retary shall take into account results
18 of available independent studies of
19 mortality of individuals covered by
20 pension plans.

21 “(III) PERIODIC REVIEW.—The
22 Secretary shall periodically (at least
23 every 5 years) review any tables in ef-
24 fect under this subsection and shall,
25 to the extent the Secretary determines

1 necessary, by regulation update the
2 tables to reflect the actual experience
3 of pension plans and projected trends
4 in such experience.

5 “(iii) SEPARATE MORTALITY TABLES
6 FOR THE DISABLED.—Notwithstanding
7 clause (ii)—

8 “(I) IN GENERAL.—In the case
9 of plan years beginning after Decem-
10 ber 31, 1995, the Secretary shall es-
11 tablish mortality tables which may be
12 used (in lieu of the tables under
13 clause (ii)) to determine current liabil-
14 ity under this subsection for individ-
15 uals who are entitled to benefits under
16 the plan on account of disability. The
17 Secretary shall establish separate ta-
18 bles for individuals whose disabilities
19 occur in plan years beginning before
20 January 1, 1995, and for individuals
21 whose disabilities occur in plan years
22 beginning on or after such date.

23 “(II) SPECIAL RULE FOR DIS-
24 ABILITIES OCCURRING AFTER 1994.—
25 In the case of disabilities occurring in

1 plan years beginning after December
2 31, 1994, the tables under subclause
3 (I) shall apply only with respect to in-
4 dividuals described in such subclause
5 who are disabled within the meaning
6 of title II of the Social Security Act
7 and the regulations thereunder.

8 “(III) PLAN YEARS BEGINNING
9 IN 1995.—In the case of any plan year
10 beginning in 1995, a plan may use its
11 own mortality assumptions for indi-
12 viduals who are entitled to benefits
13 under the plan on account of disabil-
14 ity.”

15 (B) AMORTIZATION OF UNFUNDED MOR-
16 TALITY INCREASE AMOUNT.—

17 (i) IN GENERAL.—Paragraph (2) of
18 section 412(l), as amended by paragraph
19 (3), is amended by striking “plus” at the
20 end of subparagraph (B), by striking the
21 period at the end of subparagraph (C) and
22 inserting “, and”, and by adding at the
23 end the following new subparagraph:

24 “(D) the aggregate of the unfunded mor-
25 tality increase amounts.”

1 (ii) UNFUNDED MORTALITY INCREASE
2 AMOUNT.—Section 412(l), as amended by
3 paragraph (1), is amended by adding at
4 the end the following new paragraph:

5 “(10) UNFUNDED MORTALITY INCREASE
6 AMOUNT.—

7 “(A) IN GENERAL.—The unfunded mortal-
8 ity increase amount with respect to each un-
9 funded mortality increase is the amount nec-
10 essary to amortize such increase in equal an-
11 nual installments over a period of 10 plan years
12 (beginning with the first plan year for which a
13 plan uses any new mortality table issued under
14 paragraph (7)(C)(ii)(II) or (III)).

15 “(B) UNFUNDED MORTALITY INCREASE.—
16 For purposes of subparagraph (A), the term
17 ‘unfunded mortality increase’ means an amount
18 equal to the excess of—

19 “(i) the current liability of the plan
20 for the first plan year for which a plan
21 uses any new mortality table issued under
22 paragraph (7)(C)(ii)(II) or (III), over

23 “(ii) the current liability of the plan
24 for such plan year which would have been
25 determined if the mortality table in effect

1 for the preceding plan year had been
2 used.”

3 (iii) CONFORMING AMENDMENT.—
4 Clause (i) of section 412(l)(4)(B), as
5 amended by paragraph (4)(B), is amended
6 by inserting “the unamortized portion of
7 each unfunded mortality increase,” after
8 “additional unfunded old liability,”.

9 (8) TRANSITION RULE.—Section 412(l), as
10 amended by paragraph (7), is amended by adding at
11 the end the following new paragraph:

12 “(11) PHASE-IN OF INCREASES IN FUNDING
13 REQUIRED BY RETIREMENT PROTECTION ACT OF
14 1994.—

15 “(A) IN GENERAL.—For any applicable
16 plan year, at the election of the employer, the
17 increase under paragraph (1) shall not exceed
18 the greater of—

19 “(i) the increase that would be re-
20 quired under paragraph (1) if the provi-
21 sions of this title as in effect for plan years
22 beginning before January 1, 1995, had re-
23 mained in effect, or

24 “(ii) the amount which, after taking
25 into account charges (other than the addi-

1 tional charge under this subsection) and
 2 credits under subsection (b), is necessary
 3 to increase the funded current liability per-
 4 centage (taking into account the expected
 5 increase in current liability due to benefits
 6 accruing during the plan year) for the ap-
 7 plicable plan year to a percentage equal to
 8 the sum of the initial funded current liabil-
 9 ity percentage of the plan plus the applica-
 10 ble number of percentage points for such
 11 applicable plan year.

12 “(B) APPLICABLE NUMBER OF PERCENT-
 13 AGE POINTS.—

14 “(i) INITIAL FUNDED CURRENT LI-
 15 ABILITY PERCENTAGE OF 75 PERCENT OR
 16 LESS.—Except as provided in clause (ii),
 17 for plans with an initial funded current li-
 18 ability percentage of 75 percent or less, the
 19 applicable number of percentage points for
 20 the applicable plan year is:

“In the case of applicable plan years beginning in:	The applicable number of percentage points is:
1995	3
1996	6
1997	9
1998	12
1999	15
2000	19
2001	24.

1 “(ii) OTHER CASES.—In the case of a
2 plan to which this clause applies, the appli-
3 cable number of percentage points for any
4 such applicable plan year is the sum of—

5 “(I) 2 percentage points;

6 “(II) the applicable number of
7 percentage points (if any) under this
8 clause for the preceding applicable
9 plan year;

10 “(III) the product of .10 multi-
11 plied by the excess (if any) of (a) 85
12 percentage points over (b) the sum of
13 the initial funded current liability per-
14 centage and the number determined
15 under subclause (II);

16 “(IV) for applicable plan years
17 beginning in 2000, 1 percentage
18 point; and

19 “(V) for applicable plan years be-
20 ginning in 2001, 2 percentage points.

21 “(iii) PLANS TO WHICH CLAUSE (ii)
22 APPLIES.—

23 “(I) IN GENERAL.—Clause (ii)
24 shall apply to a plan for an applicable
25 plan year if the initial funded current

1 liability percentage of such plan is
2 more than 75 percent.

3 “(II) PLANS INITIALLY UNDER
4 CLAUSE (i).—In the case of a plan
5 which (but for this subclause) has an
6 initial funded current liability percent-
7 age of 75 percent or less, clause (ii)
8 (and not clause (i)) shall apply to
9 such plan with respect to applicable
10 plan years beginning after the first
11 applicable plan year for which the
12 sum of the initial funded current li-
13 ability percentage and the applicable
14 number of percentage points (deter-
15 mined under clause (i)) exceeds 75
16 percent. For purposes of applying
17 clause (ii) to such a plan, the initial
18 funded current liability percentage of
19 such plan shall be treated as being the
20 sum referred to in the preceding sen-
21 tence.

22 “(C) DEFINITIONS.—For purposes of this
23 paragraph:

1 “(i) The term ‘applicable plan year’
2 means a plan year beginning after Decem-
3 ber 31, 1994, and before January 1, 2002.

4 “(ii) The term ‘initial funded current
5 liability percentage’ means the funded cur-
6 rent liability percentage as of the first day
7 of the first plan year beginning after De-
8 cember 31, 1994.”

9 (9) LIQUIDITY REQUIREMENT.—

10 (A) IN GENERAL.—Section 412(m) is
11 amended by redesignating paragraph (5) as
12 paragraph (6) and by inserting after paragraph
13 (4) the following new paragraph:

14 “(5) LIQUIDITY REQUIREMENT.—

15 “(A) IN GENERAL.—A plan to which this
16 paragraph applies shall be treated as failing to
17 pay the full amount of any required installment
18 to the extent that the value of the liquid assets
19 paid in such installment is less than the liquid-
20 ity shortfall (whether or not such liquidity
21 shortfall exceeds the amount of such install-
22 ment required to be paid but for this para-
23 graph).

24 “(B) PLANS TO WHICH PARAGRAPH AP-
25 PLIES.—This paragraph shall apply to a de-

1 fined benefit plan (other than a multiemployer
2 plan or a plan described in subsection (l)(6)(A))
3 which—

4 “(i) is required to pay installments
5 under this subsection for a plan year, and

6 “(ii) has a liquidity shortfall for any
7 quarter during such plan year.

8 “(C) PERIOD OF UNDERPAYMENT.—For
9 purposes of paragraph (1), any portion of an
10 installment that is treated as not paid under
11 subparagraph (A) shall continue to be treated
12 as unpaid until the close of the quarter in
13 which the due date for such installment occurs.

14 “(D) LIMITATION ON INCREASE.—If the
15 amount of any required installment is increased
16 by reason of subparagraph (A), in no event
17 shall such increase exceed the amount which,
18 when added to prior installments for the plan
19 year, is necessary to increase the funded cur-
20 rent liability percentage (taking into account
21 the expected increase in current liability due to
22 benefits accruing during the plan year) to 100
23 percent.

24 “(E) DEFINITIONS.—For purposes of this
25 paragraph:

1 “(i) LIQUIDITY SHORTFALL.—The
2 term ‘liquidity shortfall’ means, with re-
3 spect to any required installment, an
4 amount equal to the excess (as of the last
5 day of the quarter for which such install-
6 ment is made) of the base amount with re-
7 spect to such quarter over the value (as of
8 such last day) of the plan’s liquid assets.

9 “(ii) BASE AMOUNT.—

10 “(I) IN GENERAL.—The term
11 ‘base amount’ means, with respect to
12 any quarter, an amount equal to 3
13 times the sum of the adjusted dis-
14 bursements from the plan for the 12
15 months ending on the last day of such
16 quarter.

17 “(II) SPECIAL RULE.—If the
18 amount determined under clause (i)
19 exceeds an amount equal to 2 times
20 the sum of the adjusted disburse-
21 ments from the plan for the 36
22 months ending on the last day of the
23 quarter and an enrolled actuary cer-
24 tifies to the satisfaction of the Sec-
25 retary that such excess is the result of

1 nonrecurring circumstances, the base
2 amount with respect to such quarter
3 shall be determined without regard to
4 amounts related to those nonrecurring
5 circumstances.

6 “(iii) DISBURSEMENTS FROM THE
7 PLAN.—The term ‘disbursements from the
8 plan’ means all disbursements from the
9 trust, including purchases of annuities,
10 payments of single sums and other bene-
11 fits, and administrative expenses.

12 “(iv) ADJUSTED DISBURSEMENTS.—
13 The term ‘adjusted disbursements’ means
14 disbursements from the plan reduced by
15 the product of—

16 “(I) the plan’s funded current li-
17 ability percentage (as defined in sub-
18 section (l)(8)) for the plan year, and

19 “(II) the sum of the purchases of
20 annuities, payments of single sums,
21 and such other disbursements as the
22 Secretary shall provide in regulations.

23 “(v) LIQUID ASSETS.—The term ‘liq-
24 uid assets’ means cash, marketable securi-

1 ties and such other assets as specified by
2 the Secretary in regulations.

3 “(vi) QUARTER.—The term ‘quarter’
4 means, with respect to any required install-
5 ment, the 3-month period preceding the
6 month in which the due date for such in-
7 stallment occurs.

8 “(F) REGULATIONS.—The Secretary may
9 prescribe such regulations as are necessary to
10 carry out this paragraph.”

11 (B) EXCISE TAX ON UNPAID LIQUIDITY
12 SHORTFALL.—

13 (i) Subsection (e) of section 4971 is
14 amended by striking “(a) or (b)” wherever
15 it appears and inserting “(a), (b), or (f)”.

16 (ii) Section 4971 is amended by redес-
17 ignating subsection (f) as subsection (g)
18 and adding a new subsection (f) to read as
19 follows:

20 “(f) FAILURE TO PAY LIQUIDITY SHORTFALL.—

21 “(1) IN GENERAL.—In the case of a plan to
22 which section 412(m)(5) applies, there is hereby im-
23 posed a tax of 10 percent of the excess (if any) of—

24 “(A) the amount of the liquidity shortfall
25 for any quarter, over

1 “(B) the amount of such shortfall which is
2 paid by the required installment under section
3 412(m) for such quarter (but only if such in-
4 stallment is paid on or before the due date for
5 such installment).

6 “(2) ADDITIONAL TAX.—If the plan has a li-
7 quidity shortfall as of the close of any quarter and
8 as of the close of each of the following 4 quarters,
9 there is hereby imposed a tax equal to 100 percent
10 of the amount on which tax was imposed by para-
11 graph (1) for such first quarter.

12 “(3) DEFINITIONS AND SPECIAL RULE.—

13 “(A) LIQUIDITY SHORTFALL; QUARTER.—
14 For purposes of this subsection, the terms ‘li-
15 quidity shortfall’ and ‘quarter’ have the respec-
16 tive meanings given such terms by section
17 412(m)(5).

18 “(B) SPECIAL RULE.—If the tax imposed
19 by paragraph (2) is paid with respect to any li-
20 quidity shortfall for any quarter, no further tax
21 shall be imposed by this subsection on such
22 shortfall for such quarter.”

23 (C) TREATMENT OF FAILURE TO MAKE
24 CERTAIN PAYMENTS IF PLAN HAS LIQUIDITY

1 SHORTFALL.—Section 401(a) is amended by
2 adding at the end the following new paragraph:

3 “(32) TREATMENT OF FAILURE TO MAKE CER-
4 TAIN PAYMENTS IF PLAN HAS LIQUIDITY SHORT-
5 FALL.—

6 “(A) IN GENERAL.—A trust forming part
7 of a pension plan to which section 412(m)(5)
8 applies shall not be treated as failing to con-
9 stitute a qualified trust under this section mere-
10 ly because such plan ceases to make any pay-
11 ment described in subparagraph (B) during any
12 period that such plan has a liquidity shortfall
13 (as defined in section 412(m)(5)).

14 “(B) PAYMENTS DESCRIBED.—A payment
15 is described in this subparagraph if such pay-
16 ment is—

17 “(i) any payment, in excess of the
18 monthly amount paid under a single life
19 annuity (plus any social security supple-
20 ments described in the last sentence of sec-
21 tion 411(a)(9)), to a participant or bene-
22 ficiary whose annuity starting date (as de-
23 fined in section 417(f)(2)) occurs during
24 the period referred to in subparagraph (A),

1 “(ii) any payment for the purchase of
2 an irrevocable commitment from an insurer
3 to pay benefits, and

4 “(iii) any other payment specified by
5 the Secretary by regulations.

6 “(C) PERIOD OF SHORTFALL.—For pur-
7 poses of this paragraph, a plan has a liquidity
8 shortfall during the period that there is an
9 underpayment of an installment under section
10 412(m) by reason of paragraph (5)(A) thereof.”

11 (10) AMENDMENT TO DEFINITION OF FULL-
12 FUNDING LIMITATION.—

13 (A) Subparagraph (A) of section 412(c)(7)
14 is amended by inserting “(including the ex-
15 pected increase in current liability due to bene-
16 fits accruing during the plan year)” after “cur-
17 rent liability” in clause (i).

18 (B) Section 412(c)(7) is amended by add-
19 ing at the end the following new subparagraph:

20 “(E) MINIMUM AMOUNT.—

21 “(i) IN GENERAL.—In no event shall
22 the full-funding limitation determined
23 under subparagraph (A) be less than the
24 excess (if any) of—

1 “(I) 90 percent of the current li-
2 ability of the plan (including the ex-
3 pected increase in current liability due
4 to benefits accruing during the plan
5 year), over

6 “(II) the value of the plan’s as-
7 sets determined under paragraph (2).

8 “(ii) CURRENT LIABILITY; ASSETS.—
9 For purposes of clause (i)—

10 “(I) the term ‘current liability’
11 has the meaning given such term by
12 subsection (l)(7) (without regard to
13 subparagraph (D) thereof), and

14 “(II) assets shall not be reduced
15 by any credit balance in the funding
16 standard account.”

17 (C) Subparagraph (B) of section 412(c)(7)
18 is amended to read as follows:

19 “(B) CURRENT LIABILITY.—For purposes
20 of subparagraph (D) and subclause (I) of sub-
21 paragraph (A)(i), the term ‘current liability’
22 has the meaning given such term by subsection
23 (l)(7) (without regard to subparagraphs (C)
24 and (D) thereof) and using the rate of interest
25 used under subsection (b)(5)(B).”

1 (11) REFERENCE TO ACT.—Section 404(g)(4)
2 is amended by striking “the Single-Employer Pen-
3 sion Plan Amendments Act of 1986” and inserting
4 “the Retirement Protection Act of 1994”.

5 (b) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 shall apply to plan years beginning after December
9 31, 1994.

10 (2) REFERENCE.—The amendment made by
11 subsection (a)(11) shall take effect on the date of
12 the enactment of this Act.

13 **SEC. 752. LIMITATION ON CHANGES IN CURRENT LIABILITY**

14 **ASSUMPTIONS.**

15 (a) IN GENERAL.—Paragraph (5) of section 412(c)
16 is amended—

17 (1) by striking “If the funding method” and in-
18 serting the following:

19 “(A) IN GENERAL.—If the funding meth-
20 od”, and

21 (2) by adding at the end the following new sub-
22 paragraph:

23 “(B) APPROVAL REQUIRED FOR CERTAIN
24 CHANGES IN ASSUMPTIONS BY CERTAIN SIN-

1 GLE-EMPLOYER PLANS SUBJECT TO ADDI-
2 TIONAL FUNDING REQUIREMENT.—

3 “(i) IN GENERAL.—No actuarial as-
4 sumption (other than the assumptions de-
5 scribed in subsection (l)(7)(C)) used to de-
6 termine the current liability for a plan to
7 which this subparagraph applies may be
8 changed without the approval of the Sec-
9 retary.

10 “(ii) PLANS TO WHICH SUBPARA-
11 GRAPH APPLIES.—This subparagraph shall
12 apply to a plan only if—

13 “(I) the plan is a defined benefit
14 plan (other than a multiemployer
15 plan) to which title IV of the Em-
16 ployee Retirement Income Security
17 Act of 1974 applies;

18 “(II) the aggregate unfunded
19 vested benefits as of the close of the
20 preceding plan year (as determined
21 under section 4006(a)(3)(E)(iii) of the
22 Employee Retirement Income Security
23 Act of 1974) of such plan and all
24 other plans maintained by the contrib-
25 uting sponsors (as defined in section

1 4001(a)(13) of such Act) and mem-
2 bers of such sponsors' controlled
3 groups (as defined in section
4 4001(a)(14) of such Act) which are
5 covered by title IV of such Act (dis-
6 regarding plans with no unfunded
7 vested benefits) exceed \$50,000,000;
8 and

9 “(III) the change in assumptions
10 (determined after taking into account
11 any changes in interest rate and mor-
12 tality table) results in a decrease in
13 the unfunded current liability of the
14 plan for the current plan year that ex-
15 ceeds \$50,000,000, or that exceeds
16 \$5,000,000 and that is 5 percent or
17 more of the current liability of the
18 plan before such change.”

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendment made by
21 this section shall apply to changes in assumptions
22 for plan years beginning after October 28, 1993.

23 (2) CERTAIN CHANGES CEASE TO BE EFFEC-
24 TIVE.—In the case of changes in assumptions for
25 plan years beginning after December 31, 1992, and

1 on or before October 28, 1993, such changes shall
2 cease to be effective for plan years beginning after
3 December 31, 1994, if—

4 (A) such change would have required the
5 approval of the Secretary of the Treasury had
6 such amendment applied to such change, and

7 (B) such change is not so approved.

8 **SEC. 753. ANTICIPATION OF BARGAINED BENEFIT IN-**
9 **CREASES.**

10 (a) IN GENERAL.—Section 412(c) is amended by
11 adding at the end the following new paragraph:

12 “(12) ANTICIPATION OF BENEFIT INCREASES
13 EFFECTIVE IN THE FUTURE.—In determining pro-
14 jected benefits, the funding method of a collectively
15 bargained plan described in section 413(a) (other
16 than a multiemployer plan) shall anticipate benefit
17 increases scheduled to take effect during the term of
18 the collective bargaining agreement applicable to the
19 plan.”

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to plan years beginning after De-
22 cember 31, 1994, with respect to collective bargaining
23 agreements in effect on or after January 1, 1995.

1 **SEC. 754. MODIFICATION OF QUARTERLY CONTRIBUTION**
2 **REQUIREMENT.**

3 (a) IN GENERAL.—Paragraph (1) of section 412(m)
4 is amended—

5 (1) by inserting “which has a funded current li-
6 ability percentage (as defined in subsection (l)(8))
7 for the preceding plan year of less than 100 per-
8 cent” before “fails”, and

9 (2) by striking “any plan year” and inserting
10 “the plan year”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to plan years beginning after the
13 date of enactment of this Act.

14 **SEC. 755. EXCEPTIONS TO EXCISE TAX ON NONDEDUCTIBLE**
15 **CONTRIBUTIONS.**

16 (a) IN GENERAL.—Section 4972(c) is amended by
17 adding at the end the following new paragraph:

18 “(6) EXCEPTIONS.—In determining the amount
19 of nondeductible contributions for any taxable year,
20 there shall not be taken into account—

21 “(A) contributions that would be deduct-
22 ible under section 404(a)(1)(D) if the plan had
23 more than 100 participants if—

24 “(i) the plan is covered under section
25 4021 of the Employee Retirement Income
26 Security Act of 1974, and

1 “(ii) the plan is terminated under sec-
2 tion 4041(b) of such Act on or before the
3 last day of the taxable year, and

4 “(B) contributions to 1 or more defined
5 contribution plans which are not deductible
6 when contributed solely because of section
7 404(a)(7), but only to the extent such contribu-
8 tions do not exceed 6 percent of compensation
9 (within the meaning of section 404(a)) paid or
10 accrued (during the taxable year for which the
11 contributions were made) to beneficiaries under
12 the plans.

13 If 1 or more defined benefit plans were taken into
14 account in determining the amount allowable as a
15 deduction under section 404 for contributions to any
16 defined contribution plan, subparagraph (B) shall
17 apply only if such defined benefit plans are described
18 in section 404(a)(1)(D). For purposes of subpara-
19 graph (B), the deductible limits under section
20 404(a)(7) shall first be applied to amounts contrib-
21 uted to a defined benefit plan and then to amounts
22 described in subparagraph (B).”

23 (b) EFFECTIVE DATE.—

24 (1) SECTION 4972(c)(6)(A).—Section
25 4972(c)(6)(A) of the Internal Revenue Code of 1986

1 (as added by this section) shall apply to taxable
2 years ending on or after the date of enactment of
3 this Act.

4 (2) SECTION 4972(C)(6)(B).—Section
5 4972(c)(6)(B) of such Code (as added by this sec-
6 tion) shall apply to taxable years ending on or after
7 December 31, 1992.

8 **Subpart B—Amendments to the Employee**
9 **Retirement Income Security Act of 1974**

10 **SEC. 761. MINIMUM FUNDING REQUIREMENTS.**

11 (a) AMENDMENTS TO ADDITIONAL FUNDING RE-
12 QUIREMENTS FOR SINGLE-EMPLOYER PLANS.—

13 (1) LIMITATIONS ON ADDITIONAL FUNDING RE-
14 QUIREMENT FOR CERTAIN PLANS.—

15 (A) IN GENERAL.—Paragraph (1) of sec-
16 tion 302(d) of the Employee Retirement Income
17 Security Act of 1974 (29 U.S.C. 1082(d)) is
18 amended by striking “which has an unfunded
19 current liability” and inserting “to which this
20 subsection applies under paragraph (9)”.

21 (B) PLANS TO WHICH REQUIREMENT AP-
22 PLIES.—Section 302(d) of such Act is amended
23 by adding at the end the following new para-
24 graph:

25 “(9) APPLICABILITY OF SUBSECTION.—

1 “(A) IN GENERAL.—Except as provided in
2 paragraph (6)(A), this subsection shall apply to
3 a plan for any plan year if its funded current
4 liability percentage for such year is less than 90
5 percent.

6 “(B) EXCEPTION FOR CERTAIN PLANS AT
7 LEAST 80 PERCENT FUNDED.—Subparagraph
8 (A) shall not apply to a plan for a plan year
9 if—

10 “(i) the funded current liability per-
11 centage for the plan year is at least 80
12 percent, and

13 “(ii) such percentage for each of the
14 2 immediately preceding plan years (or
15 each of the 2d and 3d immediately preced-
16 ing plan years) is at least 90 percent.

17 “(C) FUNDED CURRENT LIABILITY PER-
18 CENTAGE.—For purposes of subparagraphs (A)
19 and (B), the term ‘funded current liability per-
20 centage’ has the meaning given such term by
21 paragraph (8)(B), except that such percentage
22 shall be determined for any plan year—

23 “(i) without regard to paragraph
24 (8)(E), and

1 “(ii) by using the rate of interest
2 which is the highest rate allowable for the
3 plan year under paragraph (7)(C).

4 “(D) TRANSITION RULES.—For purposes
5 of this paragraph:

6 “(i) FUNDED PERCENTAGE FOR
7 YEARS BEFORE 1995.—The funded current
8 liability percentage for any plan year be-
9 ginning before January 1, 1995, shall be
10 treated as not less than 90 percent only if
11 for such plan year the plan met one of the
12 following requirements (as in effect for
13 such year):

14 “(I) The full-funding limitation
15 under subsection (c)(7) for the plan
16 was zero.

17 “(II) The plan had no additional
18 funding requirement under this sub-
19 section (or would have had no such
20 requirement if its funded current li-
21 ability percentage had been deter-
22 mined under subparagraph (C)).

23 “(III) The plan’s additional fund-
24 ing requirement under this subsection

1 did not exceed the lesser of 0.5 per-
2 cent of current liability or \$5,000,000.

3 “(ii) SPECIAL RULE FOR 1995 AND
4 1996.—For purposes of determining wheth-
5 er subparagraph (B) applies to any plan
6 year beginning in 1995 or 1996, a plan
7 shall be treated as meeting the require-
8 ments of subparagraph (B)(ii) if the plan
9 met the requirements of clause (i) of this
10 subparagraph for any two of the plan years
11 beginning in 1992, 1993, and 1994
12 (whether or not consecutive).”

13 (2) RELATIONSHIP OF ADDITIONAL FUNDING
14 REQUIREMENT TO FUNDING STANDARD ACCOUNT
15 CHARGES AND CREDITS.—

16 (A) Clause (ii) of section 302(d)(1)(A) of
17 such Act is amended to read as follows:

18 “(ii) the sum of the charges for such
19 plan year under subsection (b)(2), reduced
20 by the sum of the credits for such plan
21 year under subparagraph (B) of subsection
22 (b)(3), plus”.

23 (B) The last sentence in section 302(d)(1)
24 of such Act is amended to read as follows:

1 “Such increase shall not exceed the amount which,
2 after taking into account charges (other than the ad-
3 ditional charge under this subsection) and credits
4 under subsection (b), is necessary to increase the
5 funded current liability percentage (taking into ac-
6 count the expected increase in current liability due
7 to benefits accruing during the plan year) to 100
8 percent.”

9 (3) AMENDMENT TO DEFICIT REDUCTION CON-
10 TRIBUTION.—Paragraph (2) of section 302(d) of
11 such Act is amended—

12 (A) by striking “plus” at the end of sub-
13 paragraph (A);

14 (B) by striking the period at the end of
15 subparagraph (B) and inserting “, plus”; and

16 (C) by adding at the end the following new
17 subparagraph:

18 “(C) the expected increase in current li-
19 ability due to benefits accruing during the plan
20 year.”

21 (4) INCREASE IN CURRENT LIABILITY DUE TO
22 CHANGE IN REQUIRED ASSUMPTIONS.—

23 (A) Paragraph (3) of section 302(d) of
24 such Act is amended by adding at the end the
25 following new subparagraphs:

1 “(D) SPECIAL RULE FOR REQUIRED
2 CHANGES IN ACTUARIAL ASSUMPTIONS.—

3 “(i) IN GENERAL.—The unfunded old
4 liability amount with respect to any plan
5 for any plan year shall be increased by the
6 amount necessary to amortize the amount
7 of additional unfunded old liability under
8 the plan in equal annual installments over
9 a period of 12 plan years (beginning with
10 the first plan year beginning after Decem-
11 ber 31, 1994).

12 “(ii) ADDITIONAL UNFUNDED OLD LI-
13 ABILITY.—For purposes of clause (i), the
14 term ‘additional unfunded old liability’
15 means the amount (if any) by which—

16 “(I) the current liability of the
17 plan as of the beginning of the first
18 plan year beginning after December
19 31, 1994, valued using the assump-
20 tions required by paragraph (7)(C) as
21 in effect for plan years beginning
22 after December 31, 1994, exceeds

23 “(II) the current liability of the
24 plan as of the beginning of such first
25 plan year, valued using the same as-

1 assumptions used under subclause (I)
2 (other than the assumptions required
3 by paragraph (7)(C)), using the prior
4 interest rate, and using such mortality
5 assumptions as were used to deter-
6 mine current liability for the first plan
7 year beginning after December 31,
8 1992.

9 “(iii) PRIOR INTEREST RATE.—For
10 purposes of clause (ii), the term ‘prior in-
11 terest rate’ means the rate of interest that
12 is the same percentage of the weighted av-
13 erage under subsection (b)(5)(B)(ii)(I) for
14 the first plan year beginning after Decem-
15 ber 31, 1994, as the rate of interest used
16 by the plan to determine current liability
17 for the first plan year beginning after De-
18 cember 31, 1992, is of the weighted aver-
19 age under subsection (b)(5)(B)(ii)(I) for
20 such first plan year beginning after De-
21 cember 31, 1992.

22 “(E) OPTIONAL RULE FOR ADDITIONAL
23 UNFUNDED OLD LIABILITY.—

24 “(i) IN GENERAL.—If an employer
25 makes an election under clause (ii), the ad-

1 ditional unfunded old liability for purposes
2 of subparagraph (D) shall be the amount
3 (if any) by which—

4 “(I) the unfunded current liabil-
5 ity of the plan as of the beginning of
6 the first plan year beginning after De-
7 cember 31, 1994, valued using the as-
8 sumptions required by paragraph
9 (7)(C) as in effect for plan years be-
10 ginning after December 31, 1994, ex-
11 ceeds

12 “(II) the unamortized portion of
13 the unfunded old liability under the
14 plan as of the beginning of the first
15 plan year beginning after December
16 31, 1994.

17 “(ii) ELECTION.—

18 “(I) An employer may irrevocably
19 elect to apply the provisions of this
20 subparagraph as of the beginning of
21 the first plan year beginning after De-
22 cember 31, 1994.

23 “(II) If an election is made under
24 this clause, the increase under para-
25 graph (1) for any plan year beginning

1 after December 31, 1994, and before
2 January 1, 2002, to which this sub-
3 section applies (without regard to this
4 subclause) shall not be less than the
5 increase that would be required under
6 paragraph (1) if the provisions of this
7 title as in effect for the last plan year
8 beginning before January 1, 1995,
9 had remained in effect.”

10 (B) Clause (i) of section 302(d)(4)(B) of
11 such Act is amended by inserting “, the
12 unamortized portion of the additional unfunded
13 old liability,” after “old liability”.

14 (5) APPLICABLE PERCENTAGE FOR DETERMIN-
15 ING UNFUNDED NEW LIABILITY AMOUNT.—Subpara-
16 graph (C) of section 302(d)(4) of such Act is
17 amended—

18 (A) by striking “.25” and inserting “.40”,

19 and

20 (B) by striking “35” and inserting “60”.

21 (6) UNPREDICTABLE CONTINGENT EVENT
22 AMOUNT.—

23 (A) Subparagraph (A) of section 302(d)(5)
24 of such Act is amended—

1 (i) by striking “greater of” and insert-
2 ing “greatest of” before clause (i);

3 (ii) by striking “or” at the end of
4 clause (i);

5 (iii) by striking the period at the end
6 of clause (ii) and inserting “, or”; and

7 (iv) by adding after clause (ii) the fol-
8 lowing new clause:

9 “(iii) the additional amount that
10 would be determined under paragraph
11 (4)(A) if the unpredictable contingent
12 event benefit liabilities were included in
13 unfunded new liability notwithstanding
14 paragraph (4)(B)(ii).”

15 (B) Paragraph (5) of section 302(d) of
16 such Act is amended by adding at the end the
17 following new subparagraph:

18 “(E) LIMITATION.—The present value of
19 the amounts described in subparagraph (A)
20 with respect to any one event shall not exceed
21 the unpredictable contingent event benefit li-
22 abilities attributable to that event.”

23 (C) Clause (ii) of section 302(e)(4)(D) of
24 such Act is amended—

1 (i) by striking “greater of” and insert-
2 ing “greatest of” before subclause (I);

3 (ii) by striking “or” at the end of
4 subclause (I);

5 (iii) by striking the period at the end
6 of subclause (II) and inserting “, or”; and

7 (iv) by adding after subclause (II) the
8 following new clause:

9 “(III) 25 percent of the amount
10 determined under subsection
11 (d)(5)(A)(iii) for the plan year.”

12 (7) REQUIRED INTEREST RATE AND MORTALITY
13 ASSUMPTIONS FOR DETERMINING CURRENT LIABIL-
14 ITY.—

15 (A) IN GENERAL.—Subparagraph (C) of
16 section 302(d)(7) of such Act is amended to
17 read as follows:

18 “(C) INTEREST RATE AND MORTALITY AS-
19 SUMPTIONS USED.—Effective for plan years be-
20 ginning after December 31, 1994—

21 “(i) INTEREST RATE.—

22 “(I) IN GENERAL.—The rate of
23 interest used to determine current li-
24 ability under this subsection shall be
25 the rate of interest used under sub-

1 section (b)(5), except that the highest
 2 rate in the permissible range under
 3 subparagraph (B)(ii) thereof shall not
 4 exceed the specified percentage under
 5 subclause (II) of the weighted average
 6 referred to in such subparagraph.

7 “(II) SPECIFIED PERCENTAGE.—
 8 For purposes of subclause (I), the
 9 specified percentage shall be deter-
 10 mined as follows:

“In the case of plan years be- ginning in calendar year:	The specified percentage is:
1995	109
1996	108
1997	107
1998	106
1999 and thereafter	105.

11 “(ii) MORTALITY TABLES.—

12 “(I) COMMISSIONERS’ STANDARD
 13 TABLE.—In the case of plan years be-
 14 ginning before the first plan year to
 15 which the first tables prescribed under
 16 subclause (II) apply, the mortality
 17 table used in determining current li-
 18 ability under this subsection shall be
 19 the table prescribed by the Secretary
 20 of the Treasury which is based on the
 21 prevailing commissioners’ standard
 22 table (described in section

1 807(d)(5)(A) of the Internal Revenue
2 Code of 1986) used to determine re-
3 serves for group annuity contracts is-
4 sued on January 1, 1993.

5 “(II) SECRETARIAL AUTHOR-
6 ITY.—The Secretary of the Treasury
7 may by regulation prescribe for plan
8 years beginning after December 31,
9 1999, mortality tables to be used in
10 determining current liability under
11 this subsection. Such tables shall be
12 based upon the actual experience of
13 pension plans and projected trends in
14 such experience. In prescribing such
15 tables, the Secretary of the Treasury
16 shall take into account results of
17 available independent studies of mor-
18 tality of individuals covered by pen-
19 sion plans.

20 “(III) PERIODIC REVIEW.—The
21 Secretary of the Treasury shall peri-
22 odically (at least every 5 years) review
23 any tables in effect under this sub-
24 section and shall, to the extent the
25 Secretary determines necessary, by

1 regulation update the tables to reflect
2 the actual experience of pension plans
3 and projected trends in such experi-
4 ence.

5 “(iii) SEPARATE MORTALITY TABLES
6 FOR THE DISABLED.—Notwithstanding
7 clause (ii)—

8 “(I) IN GENERAL.—In the case
9 of plan years beginning after Decem-
10 ber 31, 1995, the Secretary of the
11 Treasury shall establish mortality ta-
12 bles which may be used (in lieu of the
13 tables under clause (ii)) to determine
14 current liability under this subsection
15 for individuals who are entitled to
16 benefits under the plan on account of
17 disability. Such Secretary shall estab-
18 lish separate tables for individuals
19 whose disabilities occur in plan years
20 beginning before January 1, 1995,
21 and for individuals whose disabilities
22 occur in plan years beginning on or
23 after such date.

24 “(II) SPECIAL RULE FOR DIS-
25 ABILITIES OCCURRING AFTER 1994.—

1 In the case of disabilities occurring in
2 plan years beginning after December
3 31, 1994, the tables under subclause
4 (I) shall apply only with respect to in-
5 dividuals described in such subclause
6 who are disabled within the meaning
7 of title II of the Social Security Act
8 and the regulations thereunder.

9 “(III) PLAN YEARS BEGINNING
10 IN 1995.—In the case of any plan year
11 beginning in 1995, a plan may use its
12 own mortality assumptions for indi-
13 viduals who are entitled to benefits
14 under the plan on account of disabil-
15 ity.”

16 (B) AMORTIZATION OF UNFUNDED MOR-
17 TALITY INCREASE AMOUNT.—

18 (i) IN GENERAL.—Paragraph (2) of
19 section 302(d) of such Act, as amended by
20 paragraph (3), is amended by striking
21 “plus” at the end of subparagraph (B), by
22 striking the period at the end of subpara-
23 graph (C) and inserting “, and”, and by
24 adding at the end the following new sub-
25 paragraph:

1 “(D) the aggregate of the unfunded mor-
2 tality increase amounts.”

3 (ii) UNFUNDED MORTALITY INCREASE
4 AMOUNT.—Section 302(d) of such Act, as
5 amended by paragraph (1), is amended by
6 adding at the end the following new para-
7 graph:

8 “(10) UNFUNDED MORTALITY INCREASE
9 AMOUNT.—

10 “(A) IN GENERAL.—The unfunded mortal-
11 ity increase amount with respect to each un-
12 funded mortality increase is the amount nec-
13 essary to amortize such increase in equal an-
14 nual installments over a period of 10 plan years
15 (beginning with the first plan year for which a
16 plan uses any new mortality table issued under
17 paragraph (7)(C)(ii)(II) or (III)).

18 “(B) UNFUNDED MORTALITY INCREASE.—
19 For purposes of subparagraph (A), the term
20 ‘unfunded mortality increase’ means an amount
21 equal to the excess of—

22 “(i) the current liability of the plan
23 for the first plan year for which a plan
24 uses any new mortality table issued under
25 paragraph (7)(C)(ii)(II) or (III), over

1 “(ii) the current liability of the plan
2 for such plan year which would have been
3 determined if the mortality table in effect
4 for the preceding plan year had been
5 used.”

6 (iii) CONFORMING AMENDMENT.—
7 Clause (i) of section 302(d)(4)(B) of such
8 Act, as amended by paragraph (4)(B), is
9 amended by inserting “the unamortized
10 portion of each unfunded mortality in-
11 crease,” after “additional unfunded old li-
12 ability,”.

13 (8) TRANSITION RULE.—Section 302(d) of such
14 Act, as amended by paragraph (7), is amended by
15 adding at the end the following new paragraph:

16 “(11) PHASE-IN OF INCREASES IN FUNDING
17 REQUIRED BY RETIREMENT PROTECTION ACT OF
18 1994.—

19 “(A) IN GENERAL.—For any applicable
20 plan year, at the election of the employer, the
21 increase under paragraph (1) shall not exceed
22 the greater of—

23 “(i) the increase that would be re-
24 quired under paragraph (1) if the provi-
25 sions of this title as in effect for plan years

1 beginning before January 1, 1995, had re-
2 mained in effect, or

3 “(ii) the amount which, after taking
4 into account charges (other than the addi-
5 tional charge under this subsection) and
6 credits under subsection (b), is necessary
7 to increase the funded current liability per-
8 centage (taking into account the expected
9 increase in current liability due to benefits
10 accruing during the plan year) for the ap-
11 plicable plan year to a percentage equal to
12 the sum of the initial funded current liabil-
13 ity percentage of the plan plus the applica-
14 ble number of percentage points for such
15 applicable plan year.

16 “(B) APPLICABLE NUMBER OF PERCENT-
17 AGE POINTS.—

18 “(i) INITIAL FUNDED CURRENT LI-
19 ABILITY PERCENTAGE OF 75 PERCENT OR
20 LESS.—Except as provided in clause (ii),
21 for plans with an initial funded current li-
22 ability percentage of 75 percent or less, the
23 applicable number of percentage points for
24 the applicable plan year is:

“In the case of applicable plan years beginning in:	The applicable number of percentage points is:
1995	3
1996	6
1997	9
1998	12
1999	15
2000	19
2001	24.

1 “(ii) OTHER CASES.—In the case of a
2 plan to which this clause applies, the appli-
3 cable number of percentage points for any
4 such applicable plan year is the sum of—

5 “(I) 2 percentage points;

6 “(II) the applicable number of
7 percentage points (if any) under this
8 clause for the preceding applicable
9 plan year;

10 “(III) the product of .10 multi-
11 plied by the excess (if any) of (a) 85
12 percentage points over (b) the sum of
13 the initial funded current liability per-
14 centage and the number determined
15 under subclause (II);

16 “(IV) for applicable plan years
17 beginning in 2000, 1 percentage
18 point; and

19 “(V) for applicable plan years be-
20 ginning in 2001, 2 percentage points.

1 “(iii) PLANS TO WHICH CLAUSE (ii)
2 APPLIES.—

3 “(I) IN GENERAL.—Clause (ii)
4 shall apply to a plan for an applicable
5 plan year if the initial funded current
6 liability percentage of such plan is
7 more than 75 percent.

8 “(II) PLANS INITIALLY UNDER
9 CLAUSE (i).—In the case of a plan
10 which (but for this subclause) has an
11 initial funded current liability percent-
12 age of 75 percent or less, clause (ii)
13 (and not clause (i)) shall apply to
14 such plan with respect to applicable
15 plan years beginning after the first
16 applicable plan year for which the
17 sum of the initial funded current li-
18 ability percentage and the applicable
19 number of percentage points (deter-
20 mined under clause (i)) exceeds 75
21 percent. For purposes of applying
22 clause (ii) to such a plan, the initial
23 funded current liability percentage of
24 such plan shall be treated as being the

1 sum referred to in the preceding sen-
2 tence.

3 “(C) DEFINITIONS.—For purposes of this
4 paragraph—

5 “(i) The term ‘applicable plan year’
6 means a plan year beginning after Decem-
7 ber 31, 1994, and before January 1, 2002.

8 “(ii) The term ‘initial funded current
9 liability percentage’ means the funded cur-
10 rent liability percentage as of the first day
11 of the first plan year beginning after De-
12 cember 31, 1994.”

13 (9) LIQUIDITY REQUIREMENT.—

14 (A) IN GENERAL.—Section 302(e) of such
15 Act is amended by redesignating paragraph (5)
16 as paragraph (6) and by inserting after para-
17 graph (4) the following new paragraph:

18 “(5) LIQUIDITY REQUIREMENT.—

19 “(A) IN GENERAL.—A plan to which this
20 paragraph applies shall be treated as failing to
21 pay the full amount of any required installment
22 to the extent that the value of the liquid assets
23 paid in such installment is less than the liquid-
24 ity shortfall (whether or not such liquidity
25 shortfall exceeds the amount of such install-

1 ment required to be paid but for this para-
2 graph).

3 “(B) PLANS TO WHICH PARAGRAPH AP-
4 PLIES.—This paragraph shall apply to a de-
5 fined benefit plan (other than a multiemployer
6 plan or a plan described in subsection
7 (d)(6)(A)) which—

8 “(i) is required to pay installments
9 under this subsection for a plan year, and

10 “(ii) has a liquidity shortfall for any
11 quarter during such plan year.

12 “(C) PERIOD OF UNDERPAYMENT.—For
13 purposes of paragraph (1), any portion of an
14 installment that is treated as not paid under
15 subparagraph (A) shall continue to be treated
16 as unpaid until the close of the quarter in
17 which the due date for such installment occurs.

18 “(D) LIMITATION ON INCREASE.—If the
19 amount of any required installment is increased
20 by reason of subparagraph (A), in no event
21 shall such increase exceed the amount which,
22 when added to prior installments for the plan
23 year, is necessary to increase the funded cur-
24 rent liability percentage (taking into account
25 the expected increase in current liability due to

1 benefits accruing during the plan year) to 100
2 percent.

3 “(E) DEFINITIONS.—For purposes of this
4 paragraph—

5 “(i) LIQUIDITY SHORTFALL.—The
6 term ‘liquidity shortfall’ means, with re-
7 spect to any required installment, an
8 amount equal to the excess (as of the last
9 day of the quarter for which such install-
10 ment is made) of the base amount with re-
11 spect to such quarter over the value (as of
12 such last day) of the plan’s liquid assets.

13 “(ii) BASE AMOUNT.—

14 “(I) IN GENERAL.—The term
15 ‘base amount’ means, with respect to
16 any quarter, an amount equal to 3
17 times the sum of the adjusted dis-
18 bursements from the plan for the 12
19 months ending on the last day of such
20 quarter.

21 “(II) SPECIAL RULE.—If the
22 amount determined under clause (i)
23 exceeds an amount equal to 2 times
24 the sum of the adjusted disburse-
25 ments from the plan for the 36

1 months ending on the last day of the
2 quarter and an enrolled actuary cer-
3 tifies to the satisfaction of the Sec-
4 retary of the Treasury that such ex-
5 cess is the result of nonrecurring cir-
6 cumstances, the base amount with re-
7 spect to such quarter shall be deter-
8 mined without regard to amounts re-
9 lated to those nonrecurring cir-
10 cumstances.

11 “(iii) DISBURSEMENTS FROM THE
12 PLAN.—The term ‘disbursements from the
13 plan’ means all disbursements from the
14 trust, including purchases of annuities,
15 payments of single sums and other bene-
16 fits, and administrative expenses.

17 “(iv) ADJUSTED DISBURSEMENTS.—
18 The term ‘adjusted disbursements’ means
19 disbursements from the plan reduced by
20 the product of—

21 “(I) the plan’s funded current li-
22 ability percentage (as defined in sub-
23 section (d)(8)) for the plan year, and

24 “(II) the sum of the purchases of
25 annuities, payments of single sums,

1 and such other disbursements as the
2 Secretary of the Treasury shall pro-
3 vide in regulations.

4 “(v) LIQUID ASSETS.—The term ‘liq-
5 uid assets’ means cash, marketable securi-
6 ties and such other assets as specified by
7 the Secretary of the Treasury in regula-
8 tions.

9 “(vi) QUARTER.—The term ‘quarter’
10 means, with respect to any required install-
11 ment, the 3-month period preceding the
12 month in which the due date for such in-
13 stallment occurs.

14 “(F) REGULATIONS.—The Secretary of the
15 Treasury may prescribe such regulations as are
16 necessary to carry out this paragraph.”

17 (B) LIMITATION ON DISTRIBUTIONS
18 OTHER THAN LIFE ANNUITIES PAID BY THE
19 PLAN.—

20 (i) Section 206 of the Employee Re-
21 tirement Income Security Act of 1974 (29
22 U.S.C. 1056) is amended by adding at the
23 end the following new subsection:

24 “(e) LIMITATION ON DISTRIBUTIONS OTHER THAN
25 LIFE ANNUITIES PAID BY THE PLAN.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of this part, the fiduciary of a pension plan
3 that is subject to the additional funding require-
4 ments of section 302(d) shall not permit a prohib-
5 ited payment to be made from a plan during a pe-
6 riod in which such plan has a liquidity shortfall (as
7 defined in section 302(e)(5)).

8 “(2) PROHIBITED PAYMENT.—For purposes of
9 paragraph (1), the term ‘prohibited payment’
10 means—

11 “(A) any payment, in excess of the month-
12 ly amount paid under a single life annuity (plus
13 any social security supplements described in the
14 last sentence of section 204(b)(1)(G)), to a par-
15 ticipant or beneficiary whose annuity starting
16 date (as defined in section 205(h)(2)), that oc-
17 curs during the period referred to in paragraph
18 (1),

19 “(B) any payment for the purchase of an
20 irrevocable commitment from an insurer to pay
21 benefits, and

22 “(C) any other payment specified by the
23 Secretary of the Treasury by regulations.

24 “(3) PERIOD OF SHORTFALL.—For purposes of
25 this subsection, a plan has a liquidity shortfall dur-

1 ing the period that there is an underpayment of an
2 installment under section 302(e) by reason of para-
3 graph (5)(A) thereof.

4 “(4) COORDINATION WITH OTHER PROVI-
5 SIONS.—Compliance with this subsection shall not
6 constitute a violation of any other provision of this
7 Act.”

8 (ii) Section 502 of such Act is amend-
9 ed by adding at the end a new subsection
10 (m) to read as follows:

11 “(m) In the case of a distribution to a pension plan
12 participant or beneficiary in violation of section 206(e) by
13 a plan fiduciary, the Secretary shall assess a penalty
14 against such fiduciary in an amount equal to the value
15 of the distribution. Such penalty shall not exceed \$10,000
16 for each such distribution.”

17 (10) AMENDMENT TO DEFINITION OF FULL-
18 FUNDING LIMITATION.—

19 (A) Subparagraph (A) of section 302(c)(7)
20 of such Act is amended by inserting “(including
21 the expected increase in current liability due to
22 benefits accruing during the plan year)” after
23 “current liability” in clause (i).

1 (B) Section 302(c)(7) of such Act is
2 amended by adding at the end the following
3 new subparagraph:

4 “(E) MINIMUM AMOUNT.—

5 “(i) IN GENERAL.—In no event shall
6 the full-funding limitation determined
7 under subparagraph (A) be less than the
8 excess (if any) of—

9 “(I) 90 percent of the current li-
10 ability of the plan (including the ex-
11 pected increase in current liability due
12 to benefits accruing during the plan
13 year), over

14 “(II) the value of the plan’s as-
15 sets determined under paragraph (2).

16 “(ii) CURRENT LIABILITY; ASSETS.—

17 For purposes of clause (i)—

18 “(I) the term ‘current liability’
19 has the meaning given such term by
20 subsection (d)(7) (without regard to
21 subparagraph (D) thereof), and

22 “(II) assets shall not be reduced
23 by any credit balance in the funding
24 standard account.”

1 (C) Subparagraph (B) of section 302(c)(7)
2 of such Act is amended to read as follows:

3 “(B) CURRENT LIABILITY.—For purposes
4 of subparagraph (D) and subclause (I) of sub-
5 paragraph (A)(i), the term ‘current liability’
6 has the meaning given such term by subsection
7 (d)(7) (without regard to subparagraphs (C)
8 and (D) thereof) and using the rate of interest
9 used under subsection (b)(5)(B).”

10 (11) DEFINITION OF CONTRIBUTING SPON-
11 SOR.—Paragraph (13) of section 4001(a) of such
12 Act (29 U.S.C. 1301(a)(13)) is amended by striking
13 “means a person—” and all that follows and insert-
14 ing “means a person described in section
15 302(c)(11)(A) of this Act (without regard to section
16 302(c)(11)(B) of this Act) or section 412(c)(11)(A)
17 of the Internal Revenue Code of 1986 (without re-
18 gard to section 412(c)(11)(B) of such Code).”

19 (b) EFFECTIVE DATES.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendments made by this section
22 shall apply to plan years beginning after December
23 31, 1994.

1 (2) CONTRIBUTING SPONSOR.—The amendment
2 made by subsection (a)(11) shall be effective as if
3 included in the Pension Protection Act.

4 **SEC. 762. LIMITATION ON CHANGES IN CURRENT LIABILITY**
5 **ASSUMPTIONS.**

6 (a) IN GENERAL.—Paragraph (5) of section 302(c)
7 of the Employee Retirement Income Security Act of 1974
8 (29 U.S.C. 1082(c)(5)) is amended—

9 (1) by striking “If the funding method” and in-
10 serting the following:

11 “(A) IN GENERAL.—If the funding meth-
12 od”, and

13 (2) by adding at the end the following new sub-
14 paragraph:

15 “(B) APPROVAL REQUIRED FOR CERTAIN
16 CHANGES IN ASSUMPTIONS BY CERTAIN SIN-
17 GLE-EMPLOYER PLANS SUBJECT TO ADDI-
18 TIONAL FUNDING REQUIREMENT.—

19 “(i) IN GENERAL.—No actuarial as-
20 sumption (other than the assumptions de-
21 scribed in subsection (d)(7)(C)) used to de-
22 termine the current liability for a plan to
23 which this subparagraph applies may be
24 changed without the approval of the Sec-
25 retary of the Treasury.

1 “(ii) PLANS TO WHICH SUBPARA-
2 GRAPH APPLIES.—This subparagraph shall
3 apply to a plan only if—

4 “(I) the plan is a defined benefit
5 plan (other than a multiemployer
6 plan) to which title IV applies;

7 “(II) the aggregate unfunded
8 vested benefits as of the close of the
9 preceding plan year (as determined
10 under section 4006(a)(3)(E)(iii)) of
11 such plan and all other plans main-
12 tained by the contributing sponsors
13 (as defined in section 4001(a)(13))
14 and members of such sponsors’ con-
15 trolled groups (as defined in section
16 4001(a)(14)) which are covered by
17 title IV (disregarding plans with no
18 unfunded vested benefits) exceed
19 \$50,000,000; and

20 “(III) the change in assumptions
21 (determined after taking into account
22 any changes in interest rate and mor-
23 tality table) results in a decrease in
24 the unfunded current liability of the
25 plan for the current plan year that ex-

1 ceeds \$50,000,000, or that exceeds
2 \$5,000,000 and that is 5 percent or
3 more of the current liability of the
4 plan before such change.”

5 (b) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendment made by
7 this section shall apply to changes in assumptions
8 for plan years beginning after October 28, 1993.

9 (2) CERTAIN CHANGES CEASE TO BE EFFEC-
10 TIVE.—In the case of changes in assumptions for
11 plan years beginning after December 31, 1992, and
12 on or before October 28, 1993, such changes shall
13 cease to be effective for plan years beginning after
14 December 31, 1994, if—

15 (A) such change would have required the
16 approval of the Secretary of the Treasury had
17 such amendment applied to such change, and

18 (B) such change is not so approved.

19 **SEC. 763. ANTICIPATION OF BARGAINED BENEFIT IN-**
20 **CREASES.**

21 (a) IN GENERAL.—Section 302(c) of the Employee
22 Retirement Income Security Act of 1974 (29 U.S.C.
23 1082(c)) is amended by adding at the end the following
24 new paragraph:

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to plan years beginning after the
3 date of enactment of this Act.

4 **Subpart C—Other Funding Provisions**

5 **SEC. 766. PROHIBITION ON BENEFIT INCREASES WHERE**
6 **PLAN SPONSOR IS IN BANKRUPTCY.**

7 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
8 INCOME SECURITY ACT OF 1974.—Section 204 of the
9 Employee Retirement Income Security Act of 1974 (29
10 U.S.C. 1054) is amended by redesignating subsection (i)
11 as (j) and inserting after subsection (h) the following new
12 subsection:

13 “(i)(1) In the case of a plan described in paragraph
14 (3) which is maintained by an employer that is a debtor
15 in a case under title 11, United States Code, or similar
16 Federal or State law, no amendment of the plan which
17 increases the liabilities of the plan by reason of—

18 “(A) any increase in benefits,

19 “(B) any change in the accrual of benefits, or

20 “(C) any change in the rate at which benefits
21 become nonforfeitable under the plan,

22 with respect to employees of the debtor, shall be effective
23 prior to the effective date of such employer’s plan of reor-
24 ganization.

1 “(2) Paragraph (1) shall not apply to any plan
2 amendment that—

3 “(A) the Secretary of the Treasury determines
4 to be reasonable and that provides for only de
5 minimis increases in the liabilities of the plan with
6 respect to employees of the debtor,

7 “(B) only repeals an amendment described in
8 section 302(c)(8),

9 “(C) is required as a condition of qualification
10 under part I of subchapter D of chapter 1 of the In-
11 ternal Revenue Code of 1986, or

12 “(D) was adopted prior to, or pursuant to a col-
13 lective bargaining agreement entered into prior to,
14 the date on which the employer became a debtor in
15 a case under title 11, United States Code, or similar
16 Federal or State law.

17 “(3) This subsection shall apply only to plans (other
18 than multiemployer plans) covered under section 4021 of
19 this Act for which the funded current liability percentage
20 (within the meaning of section 302(d)(8) of this Act) is
21 less than 100 percent after taking into account the effect
22 of the amendment.

23 “(4) For purposes of this subsection, the term ‘em-
24 ployer’ has the meaning set forth in section 302(c)(11)(A),
25 without regard to section 302(c)(11)(B).”

1 (b) AMENDMENT TO INTERNAL REVENUE CODE OF
2 1986.—Section 401(a), as amended by section 751 of this
3 Act, is further amended by adding at the end the following
4 new paragraph:

5 “(33) PROHIBITION ON BENEFIT INCREASES
6 WHILE SPONSOR IS IN BANKRUPTCY.—

7 “(A) IN GENERAL.—A trust which is part
8 of a plan to which this paragraph applies shall
9 not constitute a qualified trust under this sec-
10 tion if an amendment to such plan is adopted
11 while the employer is a debtor in a case under
12 title 11, United States Code, or similar Federal
13 or State law, if such amendment increases li-
14 abilities of the plan by reason of—

15 “(i) any increase in benefits,

16 “(ii) any change in the accrual of ben-
17 efits, or

18 “(iii) any change in the rate at which
19 benefits become nonforfeitable under the
20 plan,

21 with respect to employees of the debtor, and
22 such amendment is effective prior to the effec-
23 tive date of such employer’s plan of reorganiza-
24 tion.

1 “(B) EXCEPTIONS.—This paragraph shall
2 not apply to any plan amendment if—

3 “(i) the plan, were such amendment
4 to take effect, would have a funded current
5 liability percentage (as defined in section
6 412(l)(8)) of 100 percent or more,

7 “(ii) the Secretary determines that
8 such amendment is reasonable and pro-
9 vides for only de minimis increases in the
10 liabilities of the plan with respect to em-
11 ployees of the debtor,

12 “(iii) such amendment only repeals an
13 amendment described in subsection
14 412(c)(8), or

15 “(iv) such amendment is required as a
16 condition of qualification under this part.

17 “(C) PLANS TO WHICH THIS PARAGRAPH
18 APPLIES.—This paragraph shall apply only to
19 plans (other than multiemployer plans) covered
20 under section 4021 of the Employee Retirement
21 Income Security Act of 1974.

22 “(D) EMPLOYER.—For purposes of this
23 paragraph, the term ‘employer’ means the em-
24 ployer referred to in section 412(c)(11) (with-
25 out regard to subparagraph (B) thereof).”

1 (c) EFFECTIVE DATE OF PLAN AMENDMENT.—Sec-
2 tion 4022 of the Employee Retirement Income Security
3 Act of 1974 (29 U.S.C. 1322) is amended by inserting
4 at the end the following new subsection:

5 “(f) For purposes of this section, the effective date
6 of a plan amendment described in section 204(i)(1) shall
7 be the effective date of the plan of reorganization of the
8 employer described in section 204(i)(1) or, if later, the ef-
9 fective date stated in such amendment.”

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to plan amendments adopted on
12 or after the date of enactment of this Act.

13 **SEC. 767. SINGLE SUM DISTRIBUTIONS.**

14 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
15 1986 RELATING TO MINIMUM BENEFITS.—

16 (1) DETERMINATION OF PRESENT VALUE FOR
17 PURPOSES OF RESTRICTIONS ON MANDATORY DIS-
18 TRIBUTIONS.—Subparagraph (B) of section
19 411(a)(11) is amended to read as follows:

20 “(B) DETERMINATION OF PRESENT
21 VALUE.—For purposes of subparagraph (A),
22 the present value shall be calculated in accord-
23 ance with section 417(e)(3).”

24 (2) DETERMINATION OF PRESENT VALUE FOR
25 PURPOSES OF RESTRICTIONS ON CASH-OUTS.—Para-

1 graph (3) of section 417(e) is amended to read as
2 follows:

3 “(3) DETERMINATION OF PRESENT VALUE.—

4 “(A) IN GENERAL.—

5 “(i) PRESENT VALUE.—Except as
6 provided in subparagraph (B), for pur-
7 poses of paragraphs (1) and (2), the
8 present value shall not be less than the
9 present value calculated by using the appli-
10 cable mortality table and the applicable in-
11 terest rate.

12 “(ii) DEFINITIONS.—For purposes of
13 clause (i)—

14 “(I) APPLICABLE MORTALITY
15 TABLE.—The term ‘applicable mortal-
16 ity table’ means the table prescribed
17 by the Secretary. Such table shall be
18 based on the prevailing commis-
19 sioners’ standard table (described in
20 section 807(d)(5)(A)) used to deter-
21 mine reserves for group annuity con-
22 tracts issued on the date as of which
23 present value is being determined
24 (without regard to any other subpara-
25 graph of section 807(d)(5)).

1 “(II) APPLICABLE INTEREST
2 RATE.—The term ‘applicable interest
3 rate’ means the annual rate of inter-
4 est on 30-year Treasury securities for
5 the month before the date of distribu-
6 tion or such other time as the Sec-
7 retary may by regulations prescribe.

8 “(B) EXCEPTION.—In the case of a dis-
9 tribution from a plan that was adopted and in
10 effect before the date of the enactment of the
11 Retirement Protection Act of 1994, the present
12 value of any distribution made before the ear-
13 lier of—

14 “(i) the later of the date a plan
15 amendment applying subparagraph (A) is
16 adopted or made effective, or

17 “(ii) the first day of the first plan
18 year beginning after December 31, 1999,
19 shall be calculated, for purposes of paragraphs
20 (1) and (2), using the interest rate determined
21 under the regulations of the Pension Benefit
22 Guaranty Corporation for determining the
23 present value of a lump sum distribution on
24 plan termination that were in effect on Septem-
25 ber 1, 1993, and using the provisions of the

1 plan as in effect on the day before such date of
2 enactment; but only if such provisions of the
3 plan met the requirements of section 417(e)(3)
4 as in effect on the day before such date of en-
5 actment.”

6 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
7 1986 RELATING TO MAXIMUM BENEFITS.—Subpara-
8 graph (E) of section 415(b)(2) is amended—

9 (1) by redesignating clauses (ii) and (iii) as
10 clauses (iii) and (iv), respectively,

11 (2) by striking clause (i) and inserting the fol-
12 lowing new clauses:

13 “(i) Except as provided in clause (ii),
14 for purposes of adjusting any benefit or
15 limitation under subparagraph (B) or (C),
16 the interest rate assumption shall not be
17 less than the greater of 5 percent or the
18 rate specified in the plan.

19 “(ii) For purposes of adjusting the
20 benefit or limitation of any form of benefit
21 subject to section 417(e)(3), the applicable
22 interest rate (as defined in section
23 417(e)(3)) shall be substituted for ‘5 per-
24 cent’ in clause (i).”, and

1 (3) by adding at the end the following new
2 clause:

3 “(v) For purposes of adjusting any
4 benefit or limitation under subparagraph
5 (B), (C), or (D), the mortality table used
6 shall be the table prescribed by the Sec-
7 retary. Such table shall be based on the
8 prevailing commissioners’ standard table
9 (described in section 807(d)(5)(A)) used to
10 determine reserves for group annuity con-
11 tracts issued on the date the adjustment is
12 being made (without regard to any other
13 subparagraph of section 807(d)(5)).”

14 (c) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
15 COME SECURITY ACT OF 1974.—

16 (1) DETERMINATION OF PRESENT VALUE FOR
17 PURPOSES OF RESTRICTIONS ON MANDATORY DIS-
18 TRIBUTIONS.—Section 203(e)(2) of the Employee
19 Retirement Income Security Act of 1974 (29 U.S.C.
20 1053(e)(2)) is amended to read as follows:

21 “(2) For purposes of paragraph (1), the present value
22 shall be calculated in accordance with section 205(g)(3).”

23 (2) DETERMINATION OF PRESENT VALUE FOR
24 PURPOSES OF RESTRICTIONS ON CASH-OUTS.—Sec-

1 tion 205(g)(3) of such Act (29 U.S.C. 1055(g)(3))
2 is amended to read as follows:

3 “(3) DETERMINATION OF PRESENT VALUE.—

4 “(A) IN GENERAL.—

5 “(i) PRESENT VALUE.—Except as
6 provided in subparagraph (B), for pur-
7 poses of paragraphs (1) and (2), the
8 present value shall not be less than the
9 present value calculated by using the appli-
10 cable mortality table and the applicable in-
11 terest rate.

12 “(ii) DEFINITIONS.—For purposes of
13 clause (i)—

14 “(I) APPLICABLE MORTALITY
15 TABLE.—The term ‘applicability mortal-
16 ity table’ means the table prescribed
17 by the Secretary of the Treasury.
18 Such table shall be based on the pre-
19 vailing commissioners’ standard table
20 (described in section 807(d)(5)(A) of
21 the Internal Revenue Code of 1986)
22 used to determine reserves for group
23 annuity contracts issued on the date
24 as of which present value is being de-
25 termined (without regard to any other

1 subparagraph of section 807(d)(5) of
2 such Code).

3 “(II) APPLICABLE INTEREST
4 RATE.—The term ‘applicable interest
5 rate’ means the annual rate of inter-
6 est on 30-year Treasury securities for
7 the month before the date of distribu-
8 tion or such other time as the Sec-
9 retary of the Treasury may by regula-
10 tions prescribe.

11 “(B) EXCEPTION.—In the case of a dis-
12 tribution from a plan that was adopted and in
13 effect prior to the date of the enactment of the
14 Retirement Protection Act of 1994, the present
15 value of any distribution made before the ear-
16 lier of—

17 “(i) the later of when a plan amend-
18 ment applying subparagraph (A) is adopt-
19 ed or made effective, or

20 “(ii) the first day of the first plan
21 year beginning after December 31, 1999,
22 shall be calculated, for purposes of paragraphs
23 (1) and (2), using the interest rate determined
24 under the regulations of the Pension Benefit
25 Guaranty Corporation for determining the

1 present value of a lump sum distribution on
2 plan termination that were in effect on Septem-
3 ber 1, 1993, and using the provisions of the
4 plan as in effect on the day before such date of
5 enactment; but only if such provisions of the
6 plan met the requirements of section 205(g)(3)
7 as in effect on the day before such date of en-
8 actment.”

9 (d) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to plan years and limitation
12 years beginning after December 31, 1994; except
13 that an employer may elect to treat the amendments
14 made by this section as being effective on or after
15 the date of the enactment of this Act.

16 (2) NO REDUCTION IN ACCRUED BENEFITS.—A
17 participant’s accrued benefit shall not be considered
18 to be reduced in violation of section 411(d)(6) of the
19 Internal Revenue Code of 1986 or section 204(g) of
20 the Employee Retirement Income Security Act of
21 1974 merely because (A) the benefit is determined
22 in accordance with section 417(e)(3)(A) of such
23 Code, as amended by this Act, or section 205(g)(3)
24 of the Employee Retirement Income Security Act of
25 1974, as amended by this Act, or (B) the plan ap-

1 plies section 415(b)(2)(E) of such Code, as amended
2 by this Act.

3 (3) SECTION 415.—

4 (A) NO REDUCTION REQUIRED.—An ac-
5 crued benefit shall not be required to be re-
6 duced below the accrued benefit as of the last
7 day of the last plan year beginning before Jan-
8 uary 1, 1995, merely because of the amend-
9 ments made by subsection (b).

10 (B) TIMING OF PLAN AMENDMENT.—A
11 plan that operates in accordance with the
12 amendments made by subsection (b) shall not
13 be treated as failing to satisfy section 401(a) of
14 the Internal Revenue Code of 1986 or as not
15 being operated in accordance with the provi-
16 sions of the plan until such date as the Sec-
17 retary of the Treasury provides merely because
18 the plan has not been amended to include the
19 amendments made by subsection (b).

20 **SEC. 768. ADJUSTMENTS TO LIEN FOR MISSED MINIMUM**
21 **FUNDING CONTRIBUTIONS.**

22 (a) AMENDMENTS TO THE INTERNAL REVENUE
23 CODE OF 1986.—

24 (1) CLARIFICATION OF APPLICABILITY OF PRO-
25 VISION.—Paragraph (2) of section 412(n) is amend-

1 ed by adding at the end the following new sentence:
2 “This subsection shall not apply to any plan to
3 which section 4021 of the Employee Retirement In-
4 come Security Act of 1974 does not apply (as such
5 section is in effect on the date of the enactment of
6 the Retirement Protection Act of 1994).”.

7 (2) REPEAL OF \$1,000,000 OFFSET.—Paragraph
8 (3) of section 412(n) is amended to read as follows:

9 “(3) AMOUNT OF LIEN.—For purposes of para-
10 graph (1), the amount of the lien shall be equal to
11 the aggregate unpaid balance of required install-
12 ments and other payments required under this sec-
13 tion (including interest)—

14 “(A) for plan years beginning after 1987,
15 and

16 “(B) for which payment has not been
17 made before the due date.”

18 (3) REPEAL OF 60-DAY DELAY.—Section
19 412(n)(4)(B) is amended by striking “60th day fol-
20 lowing the”.

21 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
22 INCOME SECURITY ACT OF 1974.—

23 (1) CLARIFICATION OF APPLICABILITY OF PRO-
24 VISION.—Section 302(f)(1) of the Employee Retirement
25 Income Security Act of 1974 (29 U.S.C.

1 1082(f)(1)) is amended by striking “to which this
2 section applies” and inserting “covered under sec-
3 tion 4021 of this Act”.

4 (2) REPEAL OF \$1,000,000 OFFSET.—Paragraph
5 (3) of section 302(f) of such Act is amended to read
6 as follows:

7 “(3) AMOUNT OF LIEN.—For purposes of para-
8 graph (1), the amount of the lien shall be equal to
9 the aggregate unpaid balance of required install-
10 ments and other payments required under this sec-
11 tion (including interest)—

12 “(A) for plan years beginning after 1987,
13 and

14 “(B) for which payment has not been
15 made before the due date.”

16 (3) REPEAL OF 60-DAY DELAY.—Section
17 302(f)(4)(B) of such Act is amended by striking
18 “60th day following the”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall be effective for installments and other
21 payments required under section 412 of the Internal Reve-
22 nue Code of 1986 or under part 3 of subtitle B of the
23 Employee Retirement Income Security Act of 1974 that
24 become due on or after the date of enactment.

1 **SEC. 769. SPECIAL FUNDING RULES FOR CERTAIN PLANS.**

2 (a) FUNDING RULES NOT TO APPLY TO CERTAIN
3 PLANS.—Any changes made by this Act to section 412
4 of the Internal Revenue Code of 1986 or to part 3 of sub-
5 title B of title I of the Employee Retirement Income Secu-
6 rity Act of 1974 shall not apply to—

7 (1) a plan which is, on the date of enactment
8 of this Act, subject to a restoration payment sched-
9 ule order issued by the Pension Benefit Guaranty
10 Corporation that meets the requirements of section
11 1.412(c)(1)–3 of the Treasury Regulations, or

12 (2) a plan established by an affected air carrier
13 (as defined under section 4001(a)(14)(C)(ii)(I) of
14 such Act) and assumed by a new plan sponsor pur-
15 suant to the terms of a written agreement with the
16 Pension Benefit Guaranty Corporation dated Janu-
17 ary 5, 1993, and approved by the United States
18 Bankruptcy Court for the District of Delaware on
19 December 30, 1992.

20 (b) CHANGE IN ACTUARIAL METHOD.—Any amorti-
21 zation installments for bases established under section
22 412(b) of the Internal Revenue Code of 1986 and section
23 302(b) of the Employee Retirement Income Security Act
24 of 1974 for plan years beginning after December 31,
25 1987, and before January 1, 1993, by reason of
26 nonelective changes under the frozen entry age actuarial

1 cost method shall not be included in the calculation of off-
2 sets under section 412(l)(1)(A)(ii) of such Code and sec-
3 tion 302(d)(1)(A)(ii) of such Act for the 1st 5 plan years
4 beginning after December 31, 1994.

5 **PART II—AMENDMENTS RELATED TO TITLE IV**
6 **OF THE EMPLOYEE RETIREMENT INCOME**
7 **SECURITY ACT OF 1974**

8 **SEC. 771. REPORTABLE EVENTS.**

9 (a) RESPONSIBILITY FOR REPORTABLE EVENTS RE-
10 PORTING.—Section 4043(a) of the Employee Retirement
11 Income Security Act of 1974 (29 U.S.C. 1343(a)) is
12 amended—

13 (1) in the first sentence, by inserting “or the
14 contributing sponsor” before “knows or has reason
15 to know”;

16 (2) in the first sentence, by inserting “, unless
17 a notice otherwise required under this subsection has
18 already been provided with respect to such event”
19 before the period at the end; and

20 (3) by striking the last sentence.

21 (b) NOTIFICATION THAT EVENT IS ABOUT TO
22 OCCUR.—Section 4043 of such Act is amended by redesign-
23 ating subsections (b), (c), and (d) as (c), (d), and (e),
24 respectively, and by inserting after subsection (a) the fol-
25 lowing new subsection:

1 “(b)(1) The requirements of this subsection shall be
2 applicable to a contributing sponsor if, as of the close of
3 the preceding plan year—

4 “(A) the aggregate unfunded vested benefits (as
5 determined under section 4006(a)(3)(E)(iii)) of
6 plans subject to this title which are maintained by
7 such sponsor and members of such sponsor’s con-
8 trolled groups (disregarding plans with no unfunded
9 vested benefits) exceed \$50,000,000, and

10 “(B) the funded vested benefit percentage for
11 such plans is less than 90 percent.

12 For purposes of subparagraph (B), the funded vested ben-
13 efit percentage means the percentage which the aggregate
14 value of the assets of such plans bears to the aggregate
15 vested benefits of such plans (determined in accordance
16 with section 4006(a)(3)(E)(iii)).

17 “(2) This subsection shall not apply to an event if
18 the contributing sponsor, or the member of the contribut-
19 ing sponsor’s controlled group to which the event relates,
20 is—

21 “(A) a person subject to the reporting require-
22 ments of section 13 or 15(d) of the Securities Ex-
23 change Act of 1934, or

1 “(B) a subsidiary (as defined for purposes of
2 such Act) of a person subject to such reporting re-
3 quirements.

4 “(3) No later than 30 days prior to the effective date
5 of an event described in paragraph (9), (10), (11), (12),
6 or (13) of subsection (c), a contributing sponsor to which
7 the requirements of this subsection apply shall notify the
8 corporation that the event is about to occur.

9 “(4) The corporation may waive the requirement of
10 this subsection with respect to any or all reportable events
11 with respect to any contributing sponsor.”

12 (c) NEW REPORTABLE EVENTS.—Subsection (c) of
13 section 4043 of such Act (as redesignated by subsection
14 (b)) is amended—

15 (1) by striking the “or” at the end of para-
16 graph (8);

17 (2) by striking paragraph (9); and

18 (3) by inserting after paragraph (8) the follow-
19 ing new paragraphs:

20 “(9) when, as a result of an event, a person
21 ceases to be a member of the controlled group;

22 “(10) when a contributing sponsor or a member
23 of a contributing sponsor’s controlled group
24 liquidates in a case under title 11, United States

1 Code, or under any similar Federal law or law of a
2 State or political subdivision of a State;

3 “(11) when a contributing sponsor or a member
4 of a contributing sponsor’s controlled group declares
5 an extraordinary dividend (as defined in section
6 1059(c) of the Internal Revenue Code of 1986) or
7 redeems, in any 12-month period, an aggregate of
8 10 percent or more of the total combined voting
9 power of all classes of stock entitled to vote, or an
10 aggregate of 10 percent or more of the total value
11 of shares of all classes of stock, of a contributing
12 sponsor and all members of its controlled group;

13 “(12) when, in any 12-month period, an aggre-
14 gate of 3 percent or more of the benefit liabilities of
15 a plan covered by this title and maintained by a con-
16 tributing sponsor or a member of its controlled
17 group are transferred to a person that is not a mem-
18 ber of the controlled group or to a plan or plans
19 maintained by a person or persons that are not such
20 a contributing sponsor or a member of its controlled
21 group; or

22 “(13) when any other event occurs that may be
23 indicative of a need to terminate the plan and that
24 is prescribed by the corporation in regulations.”

1 (d) DISCLOSURE EXEMPTION.—Section 4043 of such
2 Act is amended by adding at the end the following new
3 subsection:

4 “(f) Any information or documentary material sub-
5 mitted to the corporation pursuant to this section shall
6 be exempt from disclosure under section 552 of title 5,
7 United States Code, and no such information or documen-
8 tary material may be made public, except as may be rel-
9 evant to any administrative or judicial action or proceed-
10 ing. Nothing in this section is intended to prevent disclo-
11 sure to either body of Congress or to any duly authorized
12 committee or subcommittee of the Congress.”

13 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

14 (1) Subsection (a) of section 4043 of such Act,
15 and subsections (d) and (e) of such section 4043 (as
16 redesignated by subsection (b)), are each amended
17 by striking “subsection (b)” each place it appears
18 and inserting “subsection (c)”.

19 (2) Section 4042(a)(3) of such Act is amended
20 by striking “4043(b)(7)” and inserting
21 “4043(c)(7)”.

22 (f) EFFECTIVE DATE.—The amendments made by
23 this section shall be effective for events occurring 60 days
24 or more after the date of enactment of this Act.

1 **SEC. 772. CERTAIN INFORMATION REQUIRED TO BE FUR-**
2 **NISHED TO PBGC.**

3 (a) GENERAL RULE.—Subtitle A of title IV of the
4 Employee Retirement Income Security Act of 1974 (29
5 U.S.C. 1301 et seq.) is amended by adding at the end
6 the following new section:

7 **“SEC. 4010. AUTHORITY TO REQUIRE CERTAIN INFORMA-**
8 **TION.**

9 “(a) INFORMATION REQUIRED.—Each person de-
10 scribed in subsection (b) shall provide the corporation an-
11 nually, on or before a date specified by the corporation
12 in regulations, with—

13 “(1) such records, documents, or other informa-
14 tion that the corporation specifies in regulations as
15 necessary to determine the liabilities and assets of
16 plans covered by this title; and

17 “(2) copies of such person’s audited (or, if un-
18 available, unaudited) financial statements, and such
19 other financial information as the corporation may
20 prescribe in regulations.

21 “(b) PERSONS REQUIRED TO PROVIDE INFORMA-
22 TION.—The persons covered by subsection (a) are each
23 contributing sponsor, and each member of a contributing
24 sponsor’s controlled group, of a single-employer plan cov-
25 ered by this title, if—

1 “(1) the aggregate unfunded vested benefits at
2 the end of the preceding plan year (as determined
3 under section 4006(a)(3)(E)(iii)) of plans main-
4 tained by the contributing sponsor and the members
5 of its controlled group exceed \$50,000,000 (dis-
6 regarding plans with no unfunded vested benefits);

7 “(2) the conditions for imposition of a lien de-
8 scribed in section 302(f)(1)(A) and (B) of this Act
9 or section 412(n)(1)(A) and (B) of the Internal Rev-
10 enue Code of 1986 have been met with respect to
11 any plan maintained by the contributing sponsor or
12 any member of its controlled group; or

13 “(3) minimum funding waivers in excess of
14 \$1,000,000 have been granted with respect to any
15 plan maintained by the contributing sponsor or any
16 member of its controlled group, and any portion
17 thereof is still outstanding.

18 “(c) INFORMATION EXEMPT FROM DISCLOSURE RE-
19 QUIREMENTS.—Any information or documentary material
20 submitted to the corporation pursuant to this section shall
21 be exempt from disclosure under section 552 of title 5,
22 United States Code, and no such information or documen-
23 tary material may be made public, except as may be rel-
24 evant to any administrative or judicial action or proceed-
25 ing. Nothing in this section is intended to prevent disclo-

1 sure to either body of Congress or to any duly authorized
2 committee or subcommittee of the Congress.”

3 (b) CLERICAL AMENDMENT.—The table of contents
4 contained in section 1 of such Act is amended by inserting
5 after the item relating to section 4009 the following new
6 item:

“Sec. 4010. Authority to require certain information.”

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall be effective on the date of enactment of
9 this Act.

10 **SEC. 773. ENFORCEMENT OF MINIMUM FUNDING REQUIRE-**
11 **MENTS.**

12 (a) IN GENERAL.—Paragraph (1) of section 4003(e)
13 of the Employee Retirement Income Security Act of 1974
14 (29 U.S.C. 1303(e)(1)) is amended—

15 (1) by inserting “(A)” after “enforce”; and

16 (2) by striking the period after “title” and in-
17 sserting “, and (B) in the case of a plan which is cov-
18 ered under this title (other than a multiemployer
19 plan) and for which the conditions for imposition of
20 a lien described in section 302(f)(1)(A) and (B) of
21 this Act or section 412(n)(1)(A) and (B) of the In-
22 ternal Revenue Code of 1986 have been met, section
23 302 of this Act and section 412 of such Code.”

24 (b) EFFECTIVE DATE.—The amendments made by
25 this section shall be effective for installments and other

1 payments required under section 302 of the Employee Re-
2 tirement Income Security Act of 1974 or section 412 of
3 the Internal Revenue Code of 1986 that become due on
4 or after the date of the enactment of this Act.

5 **SEC. 774. COMPUTATION OF ADDITIONAL PBGC PREMIUM.**

6 (a) PHASE-OUT OF VARIABLE RATE PREMIUM
7 CAP.—

8 (1) IN GENERAL.—Subparagraph (E) of section
9 4006(a)(3) of the Employee Retirement Income Se-
10 curity Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is
11 amended by striking clause (iv), and by redesignat-
12 ing clause (v) as clause (iv).

13 (2) EFFECTIVE DATE.—

14 (A) IN GENERAL.—The amendments made
15 by this subsection shall be effective for plan
16 years beginning on or after July 1, 1994.

17 (B) TRANSITION RULE.—In the case of
18 plan years beginning on or after July 1, 1994,
19 and before July 1, 1996, the additional pre-
20 mium payable with respect to any participant
21 by reason of the amendments made by this sec-
22 tion shall not exceed the sum of—

23 (i) \$53, and

24 (ii) the product derived by multiply-
25 ing—

1 (I) the excess (if any) of the
 2 amount determined under clause (i) of
 3 section 4006(a)(3)(E) of the Em-
 4 ployee Retirement Income Security
 5 Act of 1974, over \$53, by

6 (II) the applicable percentage.

7 For purposes of this subparagraph, the applica-
 8 ble percentage shall be the percentage specified
 9 in the following table:

For the plan year beginning:		The appli- cable per- centage is:
on or after	but before	
July 1, 1994	July 1, 1995	20 percent
July 1, 1995	July 1, 1996	60 percent

10 (b) INTEREST RATE AND ASSET VALUATION.—

11 (1) INTEREST RATE.—Subclause (II) of section
 12 4006(a)(3)(E)(iii) of the Employee Retirement In-
 13 come Security Act of 1974 is amended—

14 (A) by striking “80 percent” and inserting
 15 “the applicable percentage”, and

16 (B) by adding at the end the following new
 17 sentence: “For purposes of this subclause, the
 18 applicable percentage is 80 percent for plan
 19 years beginning before July 1, 1997, 85 percent
 20 for plan years beginning after June 30, 1997,
 21 and before the 1st plan year to which the first
 22 tables prescribed under section

1 302(d)(7)(C)(ii)(II) apply, and 100 percent for
2 such 1st plan year and subsequent plan years.”

3 (2) ASSET VALUATION.—Clause (iii) of section
4 4006(a)(3)(E) of such Act is amended—

5 (A) by inserting “or (III)” after
6 “subclause (II)” in subclause (I), and

7 (B) by adding at the end the following new
8 subclause:

9 “(III) In the case of any plan
10 year for which the applicable percent-
11 age under subclause (II) is 100 per-
12 cent, the value of the plan’s assets
13 used in determining unfunded current
14 liability under subclause (I) shall be
15 their fair market value.”

16 (3) EFFECTIVE DATE.—The amendments made
17 by this subsection shall apply to plan years begin-
18 ning after the date of the enactment of this Act.

19 (c) TRANSITION RULE FOR CERTAIN REGULATED
20 PUBLIC UTILITIES.—In the case of a regulated public util-
21 ity described in section 7701(a)(33)(A)(i) of the Internal
22 Revenue Code of 1986, the amendments made by this sec-
23 tion shall not apply to plan years beginning before the ear-
24 lier of—

25 (1) January 1, 1998, or

1 (2) the date the regulated public utility begins
2 to collect from utility customers rates that reflect
3 the costs incurred or projected to be incurred for ad-
4 ditional premiums under section 4006(a)(3)(E) of
5 the Employee Retirement Income Security Act of
6 1974 pursuant to final and nonappealable deter-
7 minations by all public utility commissions (or other
8 authorities having jurisdiction over the rates and
9 terms of service by the regulated public utility) that
10 the costs are just and reasonable and recoverable
11 from customers of the regulated public utility.

12 **SEC. 775. DISCLOSURE TO PARTICIPANTS.**

13 (a) PARTICIPANT NOTICE REQUIREMENT.—Subtitle
14 A of title IV of the Employee Retirement Income Security
15 Act of 1974 (as amended by section 772 of this Act) is
16 further amended by adding at the end the following new
17 section:

18 **“SEC. 4011. NOTICE TO PARTICIPANTS.**

19 “(a) IN GENERAL.—The plan administrator of a plan
20 subject to the additional premium under section
21 4006(a)(3)(E) shall provide, in a form and manner and
22 at such time as prescribed in regulations of the corpora-
23 tion, notice to plan participants and beneficiaries of the
24 plan’s funding status and the limits on the corporation’s
25 guaranty should the plan terminate while underfunded.

1 Such notice shall be written in a manner so as to be under-
2 stood by the average plan participant.

3 “(b) EXCEPTION.—Subsection (a) shall not apply to
4 any plan to which section 302(d) does not apply for the
5 plan year by reason of paragraph (9) thereof.”

6 (b) CLERICAL AMENDMENT.—The table of contents
7 contained in section 1 of such Act is amended by inserting
8 after the item relating to section 4010 (as added by sec-
9 tion 772 of this Act) the following new item:

“Sec. 4011. Notice to participants.”

10 (c) EFFECTIVE DATE.—The amendment made by
11 this section shall be effective for plan years beginning after
12 the date of enactment of this Act.

13 **SEC. 776. MISSING PARTICIPANTS.**

14 (a) IN GENERAL.—Subtitle C of title IV of the Em-
15 ployee Retirement Income Security Act of 1974 (29
16 U.S.C. 1341 et seq.) is amended by adding at the end
17 the following new section:

18 **“SEC. 4050. MISSING PARTICIPANTS.**

19 “(a) GENERAL RULE.—

20 “(1) PAYMENT TO THE CORPORATION.—A plan
21 administrator satisfies section 4041(b)(3)(A) in the
22 case of a missing participant only if the plan admin-
23 istrator—

24 “(A) transfers the participant’s designated
25 benefit to the corporation or purchases an irrev-

1 ocable commitment from an insurer in accord-
2 ance with clause (i) of section 4041(b)(3)(A),
3 and

4 “(B) provides the corporation such infor-
5 mation and certifications with respect to such
6 designated benefits or irrevocable commitments
7 as the corporation shall specify.

8 “(2) TREATMENT OF TRANSFERRED ASSETS.—
9 A transfer to the corporation under this section shall
10 be treated as a transfer of assets from a terminated
11 plan to the corporation as trustee, and shall be held
12 with assets of terminated plans for which the cor-
13 poration is trustee under section 4042, subject to
14 the rules set forth in that section.

15 “(3) PAYMENT BY THE CORPORATION.—After a
16 missing participant whose designated benefit was
17 transferred to the corporation is located—

18 “(A) in any case in which the plan could
19 have distributed the benefit of the missing par-
20 ticipant in a single sum without participant or
21 spousal consent under section 205(g), the cor-
22 poration shall pay the participant or beneficiary
23 a single sum benefit equal to the designated
24 benefit paid the corporation plus interest as
25 specified by the corporation, and

1 “(B) in any other case, the corporation
2 shall pay a benefit based on the designated ben-
3 efit and the assumptions prescribed by the cor-
4 poration at the time that the corporation re-
5 ceived the designated benefit.

6 The corporation shall make payments under sub-
7 paragraph (B) available in the same forms and at
8 the same times as a guaranteed benefit under sec-
9 tion 4022 would be available to be paid, except that
10 the corporation may make a benefit available in the
11 form of a single sum if the plan provided a single
12 sum benefit (other than a single sum described in
13 subsection (b)(2)(A)).

14 “(b) DEFINITIONS.—For purposes of this section—

15 “(1) MISSING PARTICIPANT.—The term ‘miss-
16 ing participant’ means a participant or beneficiary
17 under a terminating plan whom the plan adminis-
18 trator cannot locate after a diligent search.

19 “(2) DESIGNATED BENEFIT.—The term ‘des-
20 ignated benefit’ means the single sum benefit the
21 participant would receive—

22 “(A) under the plan’s assumptions, in the
23 case of a distribution that can be made without
24 participant or spousal consent under section
25 205(g);

1 “(B) under the assumptions of the cor-
2 poration in effect on the date that the des-
3 ignated benefit is transferred to the corpora-
4 tion, in the case of a plan that does not pay any
5 single sums other than those described in sub-
6 paragraph (A); or

7 “(C) under the assumptions of the cor-
8 poration or of the plan, whichever provides the
9 higher single sum, in the case of a plan that
10 pays a single sum other than those described in
11 subparagraph (A).

12 “(c) REGULATORY AUTHORITY.—The corporation
13 shall prescribe such regulations as are necessary to carry
14 out the purposes of this section, including rules relating
15 to what will be considered a diligent search, the amount
16 payable to the corporation, and the amount to be paid by
17 the corporation.”

18 (b) CONFORMING TITLE IV AMENDMENTS.—

19 (1) AMENDMENT TO SECTION 4003.—Section
20 4003(a) of such Act (29 U.S.C. 1303(a)) is amend-
21 ed in the second sentence by inserting before the pe-
22 riod the following: “and whether section 4050(a) has
23 been satisfied”.

24 (2) AMENDMENT TO SECTION 4005.—Section
25 4005(b)(2)(A) of such Act (29 U.S.C.

1 1305(b)(2)(A)) is amended by inserting “or benefits
2 payable under section 4050” after “section 4022A”.

3 (3) AMENDMENT TO SECTION 4041.—Section
4 4041(b)(3)(A)(ii) of such Act (29 U.S.C.
5 1341(b)(3)(A)(ii)) is amended by adding at the end
6 the following new sentence: “A transfer of assets to
7 the corporation in accordance with section 4050 on
8 behalf of a missing participant shall satisfy this sub-
9 paragraph with respect to such participant.”

10 (c) CONFORMING ERISA AMENDMENTS.—

11 (1) The table of contents contained in section
12 1 of the Employee Retirement Income Security Act
13 of 1974 is amended by inserting after the item relat-
14 ed to section 4049 the following new item:

“Sec. 4050. Missing participants.”

15 (2) Section 206 of such Act (29 U.S.C. 1056)
16 is amended by adding at the end the following new
17 subsection:

18 “(f) MISSING PARTICIPANTS IN TERMINATED
19 PLANS.—In the case of a plan covered by title IV, the
20 plan shall provide that, upon termination of the plan, ben-
21 efits of missing participants shall be treated in accordance
22 with section 4050.”

23 (d) CONFORMING INTERNAL REVENUE CODE
24 AMENDMENTS.—Section 401(a), as amended by section

1 by reason of disability that occurred on or before the ter-
2 mination date, if the participant demonstrates to the satis-
3 faction of the corporation that the Social Security Admin-
4 istration has determined that the participant satisfies the
5 definition of disability under title II or XVI of the Social
6 Security Act, and the regulations thereunder. If a benefit
7 payable by reason of disability is converted to an early
8 or normal retirement benefit for reasons other than a
9 change in the health of the participant, such early or nor-
10 mal retirement benefit shall be treated as a continuation
11 of the benefit payable by reason of disability and this sub-
12 paragraph shall continue to apply.”

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall be effective for plan terminations under
15 section 4041(c) of the Employee Retirement Income Secu-
16 rity Act of 1974 with respect to which notices of intent
17 to terminate are provided under section 4041(a)(2) of
18 such Act, or under section 4042 of such Act with respect
19 to which proceedings are instituted by the corporation, on
20 or after the date of enactment of this Act.

21 **SEC. 778. PROCEDURES TO FACILITATE DISTRIBUTION OF**
22 **TERMINATION BENEFITS.**

23 (a) REMEDIES FOR NONCOMPLIANCE WITH RE-
24 QUIREMENTS FOR STANDARD TERMINATION.—

1 (1) NOTICE OF NONCOMPLIANCE.—Section
2 4041(b)(2)(C)(i) of the Employee Retirement In-
3 come Security Act of 1974 (29 U.S.C.
4 1341(b)(2)(C)(i)) is amended—

5 (A) by striking subclause (I) and inserting
6 the following new subclause:

7 “(I) it determines, based on the
8 notice sent under paragraph (2)(A) of
9 subsection (b), that there is reason to
10 believe that the plan is not sufficient
11 for benefit liabilities.”;

12 (B) by striking the period at the end of
13 subclause (II) and inserting “, or”; and

14 (C) by adding at the end the following new
15 subclause:

16 “(III) it determines that any
17 other requirement of subparagraph
18 (A) or (B) of this paragraph or of
19 subsection (a)(2) has not been met,
20 unless it further determines that the
21 issuance of such notice would be in-
22 consistent with the interests of par-
23 ticipants and beneficiaries.”

24 (2) EFFECTIVE DATE.—The amendments made
25 by this subsection shall apply to any plan termi-

1 nation under section 4041(b) of the Employee Re-
2 tirement Income Security Act of 1974 with respect
3 to which the Pension Benefit Guaranty Corporation
4 has not, as of the date of enactment of this Act, is-
5 sued a notice of noncompliance that has become
6 final, or otherwise issued a final determination that
7 the plan termination is nullified.

8 (b) DISTRESS TERMINATION CRITERIA FOR BANK-
9 ING INSTITUTIONS.—

10 (1) CLARIFICATION OF DISTRESS CRITERION.—

11 Subclause (I) of section 4041(c)(2)(B)(i) of the Em-
12 ployee Retirement Income Security Act of 1974 (29
13 U.S.C. 1341(c)(2)(B)(i)) is amended by inserting
14 after “under any similar” the following: “Federal
15 law or”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by this subsection shall be effective as if included in
18 the Single-Employer Pension Plan Amendments Act
19 of 1986.

20 **PART III—EFFECTIVE DATES**

21 **SEC. 781. EFFECTIVE DATES.**

22 Except as otherwise provided in this subtitle, the
23 amendments made by this subtitle shall be effective on the
24 date of enactment of this Act.

TITLE VIII—PIONEER PREFERENCES

3 SEC. 801. PIONEER PREFERENCES.

4 Section 309(j) of the Communications Act of 1934
5 (47 U.S.C. 309(j)) is amended by adding at the end the
6 following new paragraph:

7 “(13) RECOVERY OF VALUE OF PUBLIC SPEC-
8 TRUM IN CONNECTION WITH PIONEER PREF-
9 ERENCES.—

10 “(A) IN GENERAL.—Notwithstanding para-
11 graph (6)(G), the Commission shall not award
12 licenses pursuant to a preferential treatment
13 accorded by the Commission to persons who
14 make significant contributions to the develop-
15 ment of a new telecommunications service or
16 technology, except in accordance with the re-
17 quirements of this paragraph.

18 “(B) RECOVERY OF VALUE.—The Commis-
19 sion shall recover for the public a portion of the
20 value of the public spectrum resource made
21 available to such person by requiring such per-
22 son, as a condition for receipt of the license, to
23 agree to pay a sum determined by—

24 “(i) identifying the winning bids for
25 the licenses that the Commission deter-

1 mines are most reasonably comparable in
2 terms of bandwidth, scope of service area,
3 usage restrictions, and other technical
4 characteristics to the license awarded to
5 such person, and excluding licenses that
6 the Commission determines are subject to
7 bidding anomalies due to the award of
8 preferential treatment;

9 “(ii) dividing each such winning bid
10 by the population of its service area (here-
11 inafter referred to as the per capita bid
12 amount);

13 “(iii) computing the average of the
14 per capita bid amounts for the licenses
15 identified under clause (i);

16 “(iv) reducing such average amount
17 by 15 percent; and

18 “(v) multiplying the amount deter-
19 mined under clause (iv) by the population
20 of the service area of the license obtained
21 by such person.

22 “(C) INSTALLMENTS PERMITTED.—The
23 Commission shall require such person to pay
24 the sum required by subparagraph (B) in a
25 lump sum or in guaranteed installment pay-

1 ments, with or without royalty payments, over
2 a period of not more than 5 years.

3 “(D) RULEMAKING ON PIONEER PREF-
4 ERENCES.—Except with respect to pending ap-
5 plications described in clause (iv) of this sub-
6 paragraph, the Commission shall prescribe reg-
7 ulations specifying the procedures and criteria
8 by which the Commission will evaluate applica-
9 tions for preferential treatment in its licensing
10 processes (by precluding the filing of mutually
11 exclusive applications) for persons who make
12 significant contributions to the development of
13 a new service or to the development of new
14 technologies that substantially enhance an exist-
15 ing service. Such regulations shall—

16 “(i) specify the procedures and cri-
17 teria by which the significance of such con-
18 tributions will be determined, after an op-
19 portunity for review and verification by ex-
20 perts in the radio sciences drawn from
21 among persons who are not employees of
22 the Commission or by any applicant for
23 such preferential treatment;

24 “(ii) include such other procedures as
25 may be necessary to prevent unjust enrich-

1 ment by ensuring that the value of any
2 such contribution justifies any reduction in
3 the amounts paid for comparable licenses
4 under this subsection;

5 “(iii) be prescribed not later than 6
6 months after the date of enactment of this
7 paragraph;

8 “(iv) not apply to applications that
9 have been accepted for filing on or before
10 September 1, 1994; and

11 “(v) cease to be effective on the date
12 of the expiration of the Commission’s au-
13 thority under subparagraph (F).

14 “(E) IMPLEMENTATION WITH RESPECT TO
15 PENDING APPLICATIONS.—In applying this
16 paragraph to any broadband licenses in the per-
17 sonal communications service awarded pursuant
18 to the preferential treatment accorded by the
19 Federal Communications Commission in the
20 Third Report and Order in General Docket 90-
21 314 (FCC 93-550, released February 3,
22 1994)—

23 “(i) the Commission shall not recon-
24 sider the award of preferences in such
25 Third Report and Order, and the Commis-

1 sion shall not delay the grant of licenses
2 based on such awards more than 15 days
3 following the date of enactment of this
4 paragraph, and the award of such pref-
5 erences and licenses shall not be subject to
6 administrative or judicial review;

7 “(ii) the Commission shall not alter
8 the bandwidth or service areas designated
9 for such licenses in such Third Report and
10 Order;

11 “(iii) except as provided in clause (v),
12 the Commission shall use, as the most rea-
13 sonably comparable licenses for purposes of
14 subparagraph (B)(i), the broadband li-
15 censes in the personal communications
16 service for blocks A and B for the 20 larg-
17 est markets (ranked by population) in
18 which no applicant has obtained pref-
19 erential treatment;

20 “(iv) for purposes of subparagraph
21 (C), the Commission shall permit guaran-
22 teed installment payments over a period of
23 5 years, subject to—

24 “(I) the payment only of interest
25 on unpaid balances during the first 2

1 years, commencing not later than 30
2 days after the award of the license
3 (including any preferential treatment
4 used in making such award) is final
5 and no longer subject to administra-
6 tive or judicial review, except that no
7 such payment shall be required prior
8 to the date of completion of the auc-
9 tion of the comparable licenses de-
10 scribed in clause (iii); and

11 “(II) payment of the unpaid bal-
12 ance and interest thereon after the
13 end of such 2 years in accordance
14 with the regulations prescribed by the
15 Commission; and

16 “(v) the Commission shall recover
17 with respect to broadband licenses in the
18 personal communications service an
19 amount under this paragraph that is equal
20 to not less than \$400,000,000, and if such
21 amount is less than \$400,000,000, the
22 Commission shall recover an amount equal
23 to \$400,000,000 by allocating such amount
24 among the holders of such licenses based

1 on the population of the license areas held
2 by each licensee.

3 The Commission shall not include in any
4 amounts required to be collected under clause
5 (v) the interest on unpaid balances required to
6 be collected under clause (iv).

7 “(F) EXPIRATION.—The authority of the
8 Commission to provide preferential treatment in
9 licensing procedures (by precluding the filing of
10 mutually exclusive applications) to persons who
11 make significant contributions to the develop-
12 ment of a new service or to the development of
13 new technologies that substantially enhance an
14 existing service shall expire on September 30,
15 1998.

16 “(G) EFFECTIVE DATE.—This paragraph
17 shall be effective on the date of its enactment
18 and apply to any licenses issued on or after Au-
19 gust 1, 1994, by the Federal Communications
20 Commission pursuant to any licensing proce-
21 dure that provides preferential treatment (by
22 precluding the filing of mutually exclusive appli-
23 cations) to persons who make significant con-
24 tributions to the development of a new service

1 or to the development of new technologies that
2 substantially enhance an existing service.”.