

Calendar No. 385

103^D CONGRESS
2^D SESSION

S. 1527

[Report No. 103-235]

A BILL

To provide for fair trade in financial services.

MARCH 15 (legislative day, FEBRUARY 22), 1994
Reported with an amendment

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To provide for fair trade in financial services.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7 (legislative day, SEPTEMBER 27), 1993

Mr. RIEGLE (for himself, Mr. D'AMATO, Mr. BRYAN, Mr. KERRY, Mr. DOMENICI, Mr. SASSER, Mr. SHELBY, Mr. CAMPBELL, Mrs. BOXER, Mrs. MURRAY, Mr. SARBANES, Mr. BOND, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

MARCH 15 (legislative day, FEBRUARY 22), 1994

Reported by Mr. RIEGLE, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for fair trade in financial services.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Fair Trade in Financial Services Act of 1993”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
Sec. 2. Effectuating the principle of national treatment for banking organiza-
 tions.
Sec. 3. Effectuating the principle of national treatment for securities organiza-
 tions.
Sec. 4. Financial interdependence study.
Sec. 5. Conforming amendments.

3 **SEC. 2. EFFECTUATING THE PRINCIPLE OF NATIONAL**
4 **TREATMENT FOR BANKING ORGANIZATIONS.**

5 The International Banking Act of 1978 (12 U.S.C.
6 3101 et seq.) is amended by adding at the end the follow-
7 ing new section:

8 **“SEC. 18. NATIONAL TREATMENT.**

9 “(a) PURPOSE.—The purpose of this section is to en-
10 courage foreign countries to accord national treatment to
11 United States banking organizations that operate or seek
12 to operate in those countries.

13 “(b) IDENTIFYING COUNTRIES THAT DENY NA-
14 TIONAL TREATMENT TO UNITED STATES BANKS OR
15 BANK HOLDING COMPANIES.—The Secretary shall iden-
16 tify the extent to which foreign countries deny national
17 treatment to United States banking organizations—

18 “(1) according to the most recent report under
19 section 3602 of the Omnibus Trade and Competi-
20 tiveness Act of 1988 (or update thereof); or

21 “(2) based on more recent information that the
22 Secretary deems appropriate.

1 “(c) DETERMINING WHETHER DENIAL OF NA-
2 TIONAL TREATMENT HAS SIGNIFICANT ADVERSE EF-
3 FECT.—

4 “(1) IN GENERAL.—The Secretary shall deter-
5 mine whether the denial of national treatment to
6 United States banking organizations by a foreign
7 country identified under subsection (b) has a signifi-
8 cant adverse effect on such organizations.

9 “(2) FACTORS TO BE CONSIDERED.—In deter-
10 mining whether and to what extent a foreign country
11 denies national treatment to United States banking
12 organizations, and in determining the effect of any
13 such denial on such banking organizations, the Sec-
14 retary shall consider appropriate factors, including—

15 “(A) the size of the foreign country’s mar-
16 kets for the financial services involved, and the
17 extent to which United States banking organi-
18 zations operate or seek to operate in those mar-
19 kets;

20 “(B) the extent to which United States
21 banking organizations may participate in devel-
22 oping regulations, guidelines, or other policies
23 regarding new products, services, and markets
24 in the foreign country;

1 “(C) the extent to which the foreign coun-
2 try issues written regulations, guidelines, or
3 other policies applicable to United States bank-
4 ing organizations operating or seeking to oper-
5 ate in the foreign country that are—

6 “(i) prescribed after adequate notice
7 and opportunity for comment;

8 “(ii) readily available to the public;
9 and

10 “(iii) prescribed in accordance with
11 objective standards that effectively prevent
12 arbitrary and capricious determinations;

13 “(D) the extent to which United States
14 banking organizations may offer foreign ex-
15 change services in the foreign country; and

16 “(E) the effects of the regulatory policies
17 of the foreign country on—

18 “(i) the lending policies of the central
19 bank of that country;

20 “(ii) capital requirements applicable
21 in that country;

22 “(iii) the regulation of deposit interest
23 rates by that country;

1 ~~“(iv) restrictions on the operation and~~
2 ~~establishment of branches in that country;~~
3 ~~and~~

4 ~~“(v) restrictions on access to auto-~~
5 ~~mated teller machine networks in that~~
6 ~~country.~~

7 ~~“(d) DETERMINATION.—~~

8 ~~“(1) PUBLICATION.—If the Secretary deter-~~
9 ~~mines that the denial of national treatment to~~
10 ~~United States banking organizations by a foreign~~
11 ~~country has a significant adverse effect on such or-~~
12 ~~ganizations, the Secretary—~~

13 ~~“(A) may, after initiating negotiations in~~
14 ~~accordance with subsection (g), and after con-~~
15 ~~sultation with the United States Trade Rep-~~
16 ~~resentative, the Secretary of State, and any~~
17 ~~other department or agency that the Secretary~~
18 ~~deems appropriate, publish that determination~~
19 ~~in the Federal Register;~~

20 ~~“(B) shall, not less frequently than annu-~~
21 ~~ally, in consultation with any department or~~
22 ~~agency that the Secretary deems appropriate,~~
23 ~~review each such determination to determine~~
24 ~~whether it should be rescinded; and~~

1 ~~“(C) shall inform State bank supervisors~~
2 ~~of the publication of that determination.~~

3 ~~“(2) EXCEPTION FOR COUNTRIES THAT ARE~~
4 ~~PARTIES TO CERTAIN AGREEMENTS GOVERNING FI-~~
5 ~~NANCIAL SERVICES.—Paragraph (1) shall not apply~~
6 ~~to a foreign country to the extent that a determina-~~
7 ~~tion under that paragraph with respect to the for-~~
8 ~~foreign country would permit action to be taken under~~
9 ~~this section that would be inconsistent with a bilat-~~
10 ~~eral or multilateral agreement that governs financial~~
11 ~~services that the President entered into with that~~
12 ~~country and the Senate and the House of Represent-~~
13 ~~atives approved, before the date of enactment of this~~
14 ~~section.~~

15 ~~“(e) SANCTIONS.—~~

16 ~~“(1) ACTION BY FEDERAL BANKING AGENCY.—~~
17 ~~If a determination under subsection (d)(1) is in ef-~~
18 ~~fect with respect to a foreign country and a publica-~~
19 ~~tion of that determination has been made in accord-~~
20 ~~ance with subsection (d)(1)(A), in evaluating an~~
21 ~~application or notice filed by a person of that foreign~~
22 ~~country, the appropriate Federal banking agency—~~

23 ~~“(A) shall consider the determination and~~
24 ~~the conclusions of—~~

1 “(i) the reports required under section
2 3602 of the Omnibus Trade and Competi-
3 tiveness Act of 1988 (and updates there-
4 to); and

5 “(ii) the reports submitted in accord-
6 ance with subsection (h);

7 “(B) shall consult with the Secretary con-
8 cerning such determination and conclusions;
9 and

10 “(C) may, only with the concurrence of the
11 Secretary, deny the application or disapprove
12 the notice, based on the determination under
13 subsection (d)(1).

14 “(2) PREVENTING EXISTING ENTITIES FROM
15 BEING USED TO EVADE THIS SECTION.—

16 “(A) IN GENERAL.—If a determination has
17 been published in accordance with subsection
18 (d)(1)(A) with respect to a foreign country, a
19 bank, foreign bank described in section 8(a),
20 branch, agency, commercial lending company,
21 or other affiliated entity that is a person of that
22 country shall not, without prior approval of the
23 appropriate Federal banking agency, after con-
24 sultation with the State bank supervisor, di-
25 rectly or indirectly, in the United States—

1 “(i) commence any line of business in
2 which the person was not engaged as of
3 the date the determination was published
4 in the Federal Register; or

5 “(ii) conduct business from any loca-
6 tion at which the person did not conduct
7 business as of that date.

8 “(B) EXCEPTION.—Subparagraph (A)
9 shall not apply with respect to companies de-
10 scribed in section 2(h)(2) of the Bank Holding
11 Company Act of 1956.

12 “(f) EXEMPTIONS FROM SANCTIONS.—

13 “(1) IN GENERAL.—Subsection (e) does not
14 apply to the subsidiaries in the United States of a
15 person of a foreign country if the Secretary deter-
16 mines that the banking laws and regulations of the
17 foreign country, as actually applied, meet or ex-
18 ceed—

19 “(A) the standards for treatment of sub-
20 sidiaries of United States banking organizations
21 contained in the Second Banking Directive, and
22 in any amendment to the Second Banking Di-
23 rective, if the Secretary determines that such
24 amendment—

1 “(i) does not restrict any operation,
2 activity, or authority to expand any oper-
3 ation or activity, permitted under those
4 standards, of any subsidiary in the foreign
5 country of any such bank or bank holding
6 company; or

7 “(ii) is in accordance with national
8 treatment of subsidiaries of such banking
9 organizations; or

10 “(B) any set of standards that, taken as a
11 whole, is no less favorable to United States
12 banking organizations than the standards re-
13 ferred to in subparagraph (A).

14 “(2) STANDARDS FOR EXERCISE OF DISCRE-
15 TION.—In exercising any discretion under this sub-
16 section, the Federal banking agencies, after
17 consultation with the Secretary, shall consider, with
18 respect to a bank, foreign bank, branch, agency,
19 commercial lending company, or other affiliated en-
20 tity that is a person of a foreign country and is op-
21 erating in the United States—

22 “(A) the extent to which the foreign coun-
23 try is progressing toward according national
24 treatment to United States banking organiza-
25 tions; and

1 “(B) whether the foreign country permits
2 United States banking organizations to expand
3 their activities in that country; even if that
4 country determined that the United States did
5 not accord national treatment to the banking
6 organizations of that country.

7 ~~“(g) NEGOTIATIONS.—~~

8 ~~“(1) IN GENERAL.—The Secretary—~~

9 ~~“(A) shall initiate negotiations with any
10 foreign country with respect to which a deter-
11 mination made under subsection (d)(1) is in
12 effect; and~~

13 ~~“(B) may initiate negotiations with any
14 foreign country which denies national treatment
15 to United States banking organizations to en-
16 sure that the foreign country accords national
17 treatment to such organizations.~~

18 ~~“(2) EXCEPTIONS.—Paragraph (1) does not re-
19 quire the Secretary to initiate negotiations with a
20 foreign country if the Secretary—~~

21 ~~“(A) determines that the negotiations—~~

22 ~~“(i) would be so unlikely to result in
23 progress toward according national treat-
24 ment to United States banking organiza-
25 tions as to be a waste of effort; or~~

1 “(ii) would impair the economic inter-
2 ests of the United States; and

3 “(B) gives written notice of that deter-
4 mination to the chairperson and the ranking
5 minority member of the Committee on Banking,
6 Housing, and Urban Affairs of the Senate and
7 of the Committee on Banking, Finance and
8 Urban Affairs of the House of Representatives.

9 “(h) REPORT.—

10 “(1) CONTENTS OF REPORT.—Not later than
11 December 1, 1994, and biennially thereafter, the
12 Secretary shall submit to the Congress a report
13 that—

14 “(A) specifies the foreign countries identi-
15 fied under subsection (b);

16 “(B) if a determination under subsection
17 (d)(1) is in effect with respect to the foreign
18 country, provides the reasons therefor;

19 “(C) if the Secretary has not made or has
20 rescinded such a determination with respect to
21 the foreign country, provides the reasons there-
22 for;

23 “(D) describes the results of any negotia-
24 tions conducted under subsection (g)(1) with
25 the foreign country; and

1 “(E) discusses the effectiveness of this sec-
2 tion in achieving the purpose of this section.

3 “(2) SUBMISSION OF REPORT.—The report re-
4 quired by paragraph (1) may be submitted as part
5 of a report or update submitted under section 3602
6 of the Omnibus Trade and Competitiveness Act of
7 1988.

8 “(i) DEFINITIONS.—For purposes of this section, the
9 following definitions shall apply:

10 “(1) APPROPRIATE FEDERAL BANKING AGEN-
11 CY.—The term ‘appropriate Federal banking agen-
12 cy’—

13 “(A) in the case of a noninsured State
14 bank or branch, means the Board of Governors
15 of the Federal Reserve System; and

16 “(B) in any other case, has the same
17 meaning as in section 3 of the Federal Deposit
18 Insurance Act.

19 “(2) BANKING ORGANIZATION.—The term
20 ‘banking organization’ means a bank, including a
21 branch or subsidiary thereof, or a bank holding com-
22 pany.

23 “(3) NATIONAL TREATMENT.—A foreign coun-
24 try accords ‘national treatment’ to United States
25 banking organizations if it offers them the same

1 competitive opportunities (including effective market
2 access) as are available to its domestic banking orga-
3 nizations.

4 “(4) PERSON OF A FOREIGN COUNTRY.—The
5 term ‘person of a foreign country’ means—

6 “(A) a person organized under the laws of
7 the foreign country;

8 “(B) a person that has its principal place
9 of business in the foreign country;

10 “(C) an individual who is—

11 “(i) a citizen of the foreign country;

12 or

13 “(ii) domiciled in the foreign country;

14 and

15 “(D) a person that is directly or indirectly
16 controlled by a person described in subpara-
17 graph (A) or (B), or by an individual described
18 in subparagraph (C).

19 “(5) SECOND BANKING DIRECTIVE.—The term
20 ‘Second Banking Directive’ means the Second Coun-
21 cil Directive of December 15, 1989, on the Coordi-
22 nation of Laws, Regulations, and Administrative
23 Provisions Relating to the Taking Up and Pursuit of
24 the Business of Credit Institutions and Amending
25 Directive 77/780/EEC (89/646/EEC).

1 ~~“(6) SECRETARY.—The term ‘Secretary’ means~~
2 ~~the Secretary of the Treasury.”.~~

3 **SEC. 3. EFFECTUATING THE PRINCIPLE OF NATIONAL**
4 **TREATMENT FOR SECURITIES ORGANIZA-**
5 **TIONS.**

6 ~~(a) PURPOSE.—The purpose of this section is to en-~~
7 ~~courage foreign countries to accord national treatment to~~
8 ~~United States securities organizations that operate or seek~~
9 ~~to operate in those countries.~~

10 ~~(b) IDENTIFYING COUNTRIES THAT DENY NATIONAL~~
11 ~~TREATMENT TO UNITED STATES SECURITIES ORGANIZA-~~
12 ~~TIONS.—The Secretary shall identify whether and to what~~
13 ~~extent foreign countries deny national treatment to United~~
14 ~~States securities organizations—~~

15 ~~(1) according to the most recent report under~~
16 ~~section 3602 of the Omnibus Trade and Competi-~~
17 ~~tiveness Act of 1988 (or update thereof); or~~

18 ~~(2) based upon more recent information that~~
19 ~~the Secretary deems appropriate.~~

20 ~~(c) DETERMINING WHETHER DENIAL OF NATIONAL~~
21 ~~TREATMENT HAS SIGNIFICANT ADVERSE EFFECT.—The~~
22 ~~Secretary shall determine whether the denial of national~~
23 ~~treatment to United States securities organizations by a~~
24 ~~foreign country identified under subsection (b) has a sig-~~
25 ~~nificant adverse effect on such organizations.~~

1 ~~(d) DETERMINATION.—~~

2 ~~(1) PUBLICATION.—If the Secretary determines~~
3 ~~that the denial of national treatment to United~~
4 ~~States securities organizations by a foreign country~~
5 ~~has a significant adverse effect on such organiza-~~
6 ~~tions, the Secretary—~~

7 ~~(A) may, after initiating negotiations in ac-~~
8 ~~cordance with subsection (g), and after con-~~
9 ~~sultation with the United States Trade Rep-~~
10 ~~resentative, the Secretary of State, and any~~
11 ~~other department or agency that the Secretary~~
12 ~~deems appropriate, publish that determination~~
13 ~~in the Federal Register; and~~

14 ~~(B) shall, not less frequently than annu-~~
15 ~~ally, in consultation with any department or~~
16 ~~agency that the Secretary deems appropriate,~~
17 ~~review each such determination to determine~~
18 ~~whether it should be rescinded.~~

19 ~~(2) EXCEPTION FOR COUNTRIES THAT ARE~~
20 ~~PARTIES TO CERTAIN AGREEMENTS GOVERNING FI-~~
21 ~~NANCIAL SERVICES.—Paragraph (1) shall not apply~~
22 ~~to a foreign country to the extent that a determina-~~
23 ~~tion under that paragraph with respect to the for-~~
24 ~~oreign country would permit action to be taken under~~
25 ~~this section that would be inconsistent with a bilat-~~

1 eral or multilateral agreement that governs financial
2 services that the President entered into with that
3 country and the Senate and the House of Represent-
4 atives approved, before the date of enactment of this
5 section.

6 ~~(e) SANCTIONS.—~~

7 ~~(1) RECOMMENDATION BY THE SECRETARY.—~~

8 If a determination under subsection ~~(d)(1)~~ is in ef-
9 fect with respect to a foreign country, the Secretary
10 may, after consultation with the United States
11 Trade Representative, the Secretary of State, and
12 any other department or agency that the Secretary
13 deems appropriate, and subject to the specific direc-
14 tion of the President (if any), recommend to the
15 Commission that the Commission deny any applica-
16 tion or notice filed by a person of that foreign coun-
17 try.

18 ~~(2) ACTION BY COMMISSION.—~~If a determina-

19 tion under subsection ~~(d)(1)~~ is in effect with respect
20 to a foreign country and a publication of that deter-
21 mination has been made in accordance with sub-
22 section ~~(d)(1)(A)~~, in evaluating any application or
23 notice filed by a person of that foreign country con-
24 cerning which the Commission has received a rec-

1 ommendation from the Secretary under paragraph
2 (1), the Commission—

3 (A) shall consider—

4 (i) the recommendation of the Sec-
5 retary; and

6 (ii) the determination and the conclu-
7 sions of the reports and updates under sec-
8 tion 3602 of the Omnibus Trade and Com-
9 petitiveness Act of 1988 and the reports
10 submitted in accordance with subsection

11 (g);

12 (B) shall consult with the Secretary con-
13 cerning the determinations and conclusions re-
14 ferred to in subparagraph (A)(ii); and

15 (C) may deny the application or disapprove
16 the notice, unless the Commission determines
17 that the denial or disapproval would be incon-
18 sistent with the public interest and the protec-
19 tion of investors.

20 (3) NOTICE REQUIRED TO ACQUIRE REG-
21 ISTERED SECURITIES ORGANIZATION.—

22 (A) IN GENERAL.—If a determination
23 under subsection (d)(1) is in effect with respect
24 to a foreign country, no person of that foreign
25 country, acting directly or indirectly, may ac-

1 quire control of any registered securities organi-
2 zation, unless—

3 (i) the Commission has been given no-
4 tice not less than 90 days in advance of
5 the acquisition, in such form as the Com-
6 mission shall prescribe by rule and contain-
7 ing such information as the Commission
8 may require by rule or order; and

9 (ii) the Commission has not dis-
10 approved the notice under paragraph
11 (2)(C).

12 (B) NOTIFYING SECRETARY.—The Com-
13 mission shall promptly notify the Secretary of
14 any notice received under subparagraph (A).

15 (C) EXTENDING 90-DAY PERIOD.—The
16 Commission may, by order, extend for an addi-
17 tional 180 days the period during which the
18 Commission may disapprove a notice received
19 under subparagraph (A).

20 (4) STANDARDS FOR EXERCISE OF DISCRE-
21 TION.—In exercising any discretion under this sub-
22 section, the Secretary and the Commission shall con-
23 sider, with respect to a securities organization that
24 is a person of a foreign country and is operating in
25 the United States—

1 (A) the extent to which the foreign country
2 is progressing toward according national treat-
3 ment to United States securities organizations;
4 and

5 (B) whether the foreign country permits
6 United States securities organizations to ex-
7 pand their activities in that country, even if
8 that country determined that the United States
9 did not accord national treatment to securities
10 organizations of that country.

11 (f) NEGOTIATIONS.—

12 (1) IN GENERAL.—The Secretary—

13 (A) shall initiate negotiations with any for-
14 eign country with respect to which a determina-
15 tion under subsection (d)(1) is in effect; and

16 (B) may initiate negotiations with any for-
17 eign country which denies national treatment to
18 United States securities organizations to ensure
19 that the foreign country accords national treat-
20 ment to such organizations.

21 (2) EXCEPTIONS.—Paragraph (1) does not re-
22 quire the Secretary to initiate negotiations with a
23 foreign country if the Secretary—

24 (A) determines that the negotiations—

1 (i) would be so unlikely to result in
2 progress toward according national treat-
3 ment to United States securities organiza-
4 tions as to be a waste of effort; or

5 (ii) would impair the economic inter-
6 ests of the United States; and

7 (B) gives written notice of that determina-
8 tion to the chairperson and the ranking minor-
9 ity member of the Committee on Banking,
10 Housing, and Urban Affairs of the Senate and
11 of the Committee of Energy and Commerce of
12 the House of Representatives.

13 ~~(g)~~ REPORT.—

14 (1) CONTENTS OF REPORT.—Not later than
15 December 1, 1994, and biennially thereafter, the
16 Secretary shall submit to the Congress a report
17 that—

18 (A) specifies the foreign countries identi-
19 fied under subsection (b);

20 (B) if a determination under subsection
21 ~~(d)~~(1) is in effect with respect to the foreign
22 country, provides the reasons therefor;

23 (C) if the Secretary has not made, or has
24 rescinded, a determination under subsection

1 (d)(1) with respect to the foreign country, pro-
2 vides the reasons therefor;

3 (D) describes the results of any negotia-
4 tions conducted under subsection (f)(1) with the
5 foreign country; and

6 (E) discusses the effectiveness of this sec-
7 tion in achieving the purpose of this section.

8 (2) SUBMISSION OF REPORT.—The report re-
9 quired by paragraph (1) may be submitted as part
10 of a report or update submitted under section 3602
11 of the Omnibus Trade and Competitiveness Act of
12 1988.

13 (h) DEFINITIONS.—For purposes of this section, the
14 following definitions shall apply:

15 (1) BROKER.—The term “broker” has the same
16 meaning as in section 3(a)(4) of the Securities Ex-
17 change Act of 1934.

18 (2) DEALER.—The term “dealer” has the same
19 meaning as in section 3(a)(5) of the Securities Ex-
20 change Act of 1934.

21 (3) COMMISSION.—The term “Commission”
22 means the Securities and Exchange Commission.

23 (4) INVESTMENT ADVISER.—The term “invest-
24 ment adviser” has the same meaning as in section
25 202(a)(11) of the Investment Advisers Act of 1940.

1 (5) NATIONAL TREATMENT.—A foreign country
2 accords “national treatment” to United States secu-
3 rities organizations if it offers them the same com-
4 petitive opportunities (including effective market ac-
5 cess) as are available to its domestic securities orga-
6 nizations.

7 (6) PERSON OF A FOREIGN COUNTRY.—The
8 term “person of a foreign country” means—

9 (A) a person organized under the laws of
10 the foreign country;

11 (B) a person that has its principal place of
12 business in the foreign country;

13 (C) an individual who is—

14 (i) a citizen of the foreign country; or

15 (ii) domiciled in the foreign country;

16 and

17 (D) a person that is directly or indirectly
18 controlled by a person described in subpara-
19 graph (A) or (B), or by an individual described
20 in subparagraph (C).

21 (7) SECRETARY.—The term “Secretary” means
22 the Secretary of the Treasury.

23 (8) SECURITIES ORGANIZATION.—The term
24 “securities organization” means a broker, a dealer,
25 or an investment adviser.

1 (i) OTHER AUTHORITY NOT AFFECTED.—This sec-
2 tion does not limit the authority of the Commission, the
3 Secretary, or any other department or agency under any
4 other provision of Federal law.

5 **SEC. 4. FINANCIAL INTERDEPENDENCE STUDY.**

6 Subtitle G of title III of the Omnibus Trade and
7 Competitiveness Act of 1988 (22 U.S.C. 5351 et seq.) is
8 amended by adding at the end the following new section:

9 **“SEC. 3605. FINANCIAL INTERDEPENDENCE STUDY.**

10 “(a) INVESTIGATION REQUIRED.—The Secretary, in
11 consultation and coordination with the Securities and Ex-
12 change Commission, the Federal banking agencies, and
13 any other appropriate Federal department or agency des-
14 ignated by the Secretary, shall conduct an investigation
15 to determine—

16 “(1) the extent of the interdependence of the fi-
17 nancial services sectors of the United States and for-
18 eign countries—

19 “(A) whose financial services institutions
20 provide financial services in the United States;
21 or

22 “(B) whose persons have substantial own-
23 ership interests in United States financial serv-
24 ices institutions; and

1 ~~“(2) the economic, strategic, and other con-~~
2 ~~sequences of that interdependence for the United~~
3 ~~States.~~

4 ~~“(b) REPORT.—~~

5 ~~“(1) REPORT REQUIRED.—Not later than 3~~
6 ~~years after the date of enactment of this section, the~~
7 ~~Secretary shall submit a report on the results of the~~
8 ~~investigation under subsection (a) to the President,~~
9 ~~the Congress, the Securities and Exchange Commis-~~
10 ~~sion, the Federal banking agencies, and any other~~
11 ~~appropriate Federal agency or department, as des-~~
12 ~~ignated by the Secretary.~~

13 ~~“(2) CONTENTS OF REPORT.—The report re-~~
14 ~~quired under paragraph (1) shall—~~

15 ~~“(A) describe the activities and estimate~~
16 ~~the scope of financial services activities con-~~
17 ~~ducted by United States financial services insti-~~
18 ~~tutions in foreign markets (differentiated ac-~~
19 ~~cording to major foreign markets);~~

20 ~~“(B) describe the activities and estimate~~
21 ~~the scope of financial services activities con-~~
22 ~~ducted by foreign financial services institutions~~
23 ~~in the United States (differentiated according~~
24 ~~to the most significant home countries or~~
25 ~~groups of home countries);~~

1 “(C) estimate the number of jobs created
2 in the United States by financial services activi-
3 ties conducted by foreign financial services in-
4 stitutions and the number of jobs created in
5 foreign countries by financial service activities
6 conducted by United States financial services
7 institutions;

8 “(D) estimate the additional jobs and reve-
9 nues (both foreign and domestic) that would be
10 created by the activities of United States finan-
11 cial services institutions in foreign countries if
12 those countries offered such institutions the
13 same competitive opportunities (including effec-
14 tive market access) as are available to the do-
15 mestic financial services institutions of those
16 countries;

17 “(E) describe the extent to which foreign
18 financial services institutions discriminate
19 against United States persons in procurement,
20 employment, the provision of credit or other fi-
21 nancial services, or otherwise;

22 “(F) describe the extent to which foreign
23 financial services institutions and other persons
24 from foreign countries purchase or otherwise fa-
25 cilitate the marketing from the United States of

1 government and private debt instruments and
2 private equity instruments;

3 “(G) describe how the interdependence of
4 the financial services sectors of the United
5 States and foreign countries affects the auton-
6 omy and effectiveness of United States mone-
7 tary policy;

8 “(H) describe the extent to which United
9 States companies rely on financing by or
10 through foreign financial services institutions
11 and the consequences of such reliance (includ-
12 ing disclosure of proprietary information) for
13 the industrial competitiveness and national se-
14 curity of the United States;

15 “(I) describe the extent to which foreign fi-
16 nancial services institutions, in purchasing high
17 technology products such as computers and
18 telecommunications equipment, favor manufac-
19 turers from their home countries over United
20 States manufacturers; and

21 “(J) contain other appropriate information
22 relating to the results of the investigation re-
23 quired by subsection (a).

24 “(c) DEFINITIONS.—For purposes of this section the
25 following definitions shall apply:

1 ~~“(1) DEPOSITORY INSTITUTION AND DEPOSIT-~~
2 ~~TORY INSTITUTION HOLDING COMPANY.—~~The terms
3 ~~‘depository institution’ and ‘depository institution~~
4 ~~holding company’ have the same meanings as in sec-~~
5 ~~tion 3 of the Federal Deposit Insurance Act.~~

6 ~~“(2) FEDERAL BANKING AGENCY.—~~The term
7 ~~‘Federal banking agencies’ has the same meaning as~~
8 ~~in section 3 of the Federal Deposit Insurance Act.~~

9 ~~“(3) FINANCIAL SERVICES INSTITUTION.—~~The
10 ~~term ‘financial services institution’ means—~~

11 ~~“(A) a broker, dealer, underwriter, clearing~~
12 ~~agency, transfer agent, or information processor~~
13 ~~with respect to securities, including government~~
14 ~~and municipal securities;~~

15 ~~“(B) an investment company, investment~~
16 ~~manager, investment adviser, indenture trustee,~~
17 ~~or any depository institution, insurance com-~~
18 ~~pany, or other organization operating as a fidu-~~
19 ~~ciary, trustee, underwriter, or other financial~~
20 ~~services provider;~~

21 ~~“(C) any depository institution or depository~~
22 ~~institution holding company; and~~

23 ~~“(D) any other entity providing financial~~
24 ~~services.~~

1 “(4) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of the Treasury.”.

3 **SEC. 5. CONFORMING AMENDMENTS.**

4 (a) REPORTS ON FOREIGN TREATMENT OF UNITED
5 STATES FINANCIAL INSTITUTIONS.—Section 3602 of the
6 Omnibus Trade and Competitiveness Act of 1988 (22
7 U.S.C. 5352) is amended—

8 (1) in the first sentence, by inserting “with up-
9 dates on significant developments every 2 years fol-
10 lowing the study conducted in 1994,” before “the
11 Secretary of the Treasury”; and

12 (2) by adding at the end the following: “For
13 purposes of this section, a foreign country denies na-
14 tional treatment to United States entities unless the
15 foreign country offers such entities the same com-
16 petitive opportunities (including effective market ac-
17 cess) as are available to the domestic entities of the
18 foreign country.”.

19 (b) NEGOTIATIONS TO PROMOTE FAIR TRADE IN FI-
20 NANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus
21 Trade and Competitiveness Act of 1988 (22 U.S.C.
22 5353(a)(1)) is amended by inserting “effective” before
23 “access”.

24 (c) PRIMARY DEALERS IN GOVERNMENT DEBT IN-
25 STRUMENTS.—Section 3502(b)(1) of the Omnibus Trade

1 and Competitiveness Act of 1988 (22 U.S.C. 5342(b)(1))
 2 is amended—

3 (1) by striking “does not accord to” and insert-
 4 ing “does not offer”; and

5 (2) by striking “as such country accords to”
 6 and inserting “(including effective market access) as
 7 are available to”.

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

9 (a) *SHORT TITLE.*—This Act may be cited as the
 10 “Fair Trade in Financial Services Act of 1994”.

11 (b) *TABLE OF CONTENTS.*—The table of contents for
 12 this Act is as follows:

Sec. 1. Short title; table of contents.

*Sec. 2. Effectuating the principle of national treatment for banking organiza-
 tions.*

*Sec. 3. Effectuating the principle of national treatment for securities organiza-
 tions.*

Sec. 4. Financial interdependence study.

Sec. 5. Conforming amendments.

13 **SEC. 2. EFFECTUATING THE PRINCIPLE OF NATIONAL**
 14 **TREATMENT FOR BANKING ORGANIZATIONS.**

15 *The International Banking Act of 1978 (12 U.S.C.*
 16 *3101 et seq.) is amended by adding at the end the following*
 17 *new section:*

18 **“SEC. 18. NATIONAL TREATMENT.**

19 *“(a) PURPOSE.—The purpose of this section is to en-
 20 courage foreign countries to accord national treatment to
 21 United States banking organizations that operate or seek
 22 to operate in those countries.*

1 “(b) *IDENTIFYING COUNTRIES THAT DENY NATIONAL*
2 *TREATMENT TO UNITED STATES BANKS OR BANK HOLD-*
3 *ING COMPANIES.*—*The Secretary shall identify the extent*
4 *to which foreign countries deny national treatment to Unit-*
5 *ed States banking organizations—*

6 “(1) *according to the most recent report under*
7 *section 3602 of the Omnibus Trade and Competitive-*
8 *ness Act of 1988 (or update thereof); or*

9 “(2) *based on more recent information that the*
10 *Secretary deems appropriate.*

11 “(c) *DETERMINING WHETHER DENIAL OF NATIONAL*
12 *TREATMENT HAS SIGNIFICANT ADVERSE EFFECT.*—

13 “(1) *IN GENERAL.*—*The Secretary shall deter-*
14 *mine whether the denial of national treatment to*
15 *United States banking organizations by a foreign*
16 *country identified under subsection (b) has a signifi-*
17 *cant adverse effect on such organizations.*

18 “(2) *FACTORS TO BE CONSIDERED.*—*In deter-*
19 *mining whether and to what extent a foreign country*
20 *denies national treatment to United States banking*
21 *organizations, and in determining the effect of any*
22 *such denial on such banking organizations, the Sec-*
23 *retary shall consider appropriate factors, including—*

24 “(A) *the size of the foreign country’s mar-*
25 *kets for the financial services involved, and the*

1 *extent to which United States banking organiza-*
2 *tions operate or seek to operate in those markets;*

3 “(B) *the extent to which United States*
4 *banking organizations may participate in devel-*
5 *oping regulations, guidelines, or other policies*
6 *regarding new products, services, and markets in*
7 *the foreign country;*

8 “(C) *the extent to which the foreign country*
9 *issues written regulations, guidelines, or other*
10 *policies applicable to United States banking or-*
11 *ganizations operating or seeking to operate in*
12 *the foreign country that are—*

13 “(i) *prescribed after adequate notice*
14 *and opportunity for comment;*

15 “(ii) *readily available to the public;*
16 *and*

17 “(iii) *prescribed in accordance with*
18 *objective standards that effectively prevent*
19 *arbitrary and capricious determinations;*

20 “(D) *the extent to which United States*
21 *banking organizations may offer foreign ex-*
22 *change services in the foreign country; and*

23 “(E) *the effects of the regulatory policies of*
24 *the foreign country on—*

1 “(i) the lending policies of the central
2 bank of that country;

3 “(ii) capital requirements applicable
4 in that country;

5 “(iii) the regulation of deposit interest
6 rates by that country;

7 “(iv) restrictions on the operation and
8 establishment of branches in that country;
9 and

10 “(v) restrictions on access to automated
11 teller machine networks in that country.

12 “(d) PUBLICATION OF DETERMINATION.—

13 “(1) IN GENERAL.—If the Secretary determines
14 under subsection (c) that the denial of national treat-
15 ment to United States banking organizations by a
16 foreign country has a significant adverse effect on
17 such organizations, the Secretary—

18 “(A) may, after initiating negotiations in
19 accordance with subsection (g), and after con-
20 sultation in accordance with subsection (i), pub-
21 lish that determination in the Federal Register;

22 “(B) shall, not less frequently than annu-
23 ally, in consultation with any department or
24 agency that the Secretary deems appropriate, re-

1 view each such determination to determine
2 whether it should be rescinded; and

3 “(C) shall inform State bank supervisors of
4 the publication of that determination.

5 “(2) EXCEPTION FOR COUNTRIES THAT ARE PAR-
6 TIES TO CERTAIN AGREEMENTS GOVERNING FINAN-
7 CIAL SERVICES.—Paragraph (1) shall not apply to a
8 foreign country to the extent that a determination
9 under that paragraph with respect to the foreign
10 country would permit action to be taken under this
11 section that would be inconsistent with a bilateral or
12 multilateral agreement that governs financial services
13 that—

14 “(A) the President entered into with that
15 country; and

16 “(B) the Senate and the House of Rep-
17 resentatives approved;
18 before the date of enactment of this section.

19 “(e) SANCTIONS.—

20 “(1) ACTION BY SECRETARY OF TREASURY.—

21 “(A) IN GENERAL.—The Secretary may,
22 after consultation in accordance with subsection
23 (i), recommend to the appropriate Federal bank-
24 ing agency that such agency deny a request for
25 authorization filed after the date of publication

1 *of a determination under subsection (d)(1) by a*
2 *person of a foreign country listed in such publi-*
3 *cation if the Secretary determines that—*

4 *“(i) such action would assist the Unit-*
5 *ed States in negotiations to eliminate dis-*
6 *crimination against United States banking*
7 *organizations;*

8 *“(ii) negotiations undertaken pursuant*
9 *to subsection (g) are not likely to result in*
10 *an agreement that eliminates the denial of*
11 *national treatment; or*

12 *“(iii) the country has not adequately*
13 *adhered to an agreement reached as a result*
14 *of negotiations undertaken pursuant to sub-*
15 *section (g).*

16 *“(B) EXERCISE OF AUTHORITY.—The au-*
17 *thority of subparagraph (A) shall be exercised*
18 *according to the specific direction (if any) of the*
19 *President.*

20 *“(C) COMPLIANCE EXCEPTIONS.—The ap-*
21 *propriate Federal banking agency shall comply*
22 *with the recommendation of the Secretary made*
23 *under subparagraph (A), unless the agency deter-*
24 *mines, in writing, and transmits such deter-*

1 *mination to the Secretary and to the Congress,*
2 *that such recommendation—*

3 *“(i) would likely result in a serious*
4 *impairment to the safe and sound operation*
5 *of the United States banking system; or*

6 *“(ii) would compromise the ability of a*
7 *Federal banking agency to resolve a failing*
8 *or failed financial institution because a for-*
9 *foreign banking institution otherwise barred*
10 *by an action under subparagraph (A) rep-*
11 *resents the only bona fide reasonable offer*
12 *available to the Federal banking agency.*

13 *“(2) APPLICATION TO EXISTING ENTITIES.—*

14 *“(A) IN GENERAL.—If a determination has*
15 *been published in accordance with subsection*
16 *(d)(1) with respect to a foreign country, a bank,*
17 *foreign bank described in section 8(a), branch,*
18 *agency, commercial lending company, or other*
19 *affiliated entity that is a person of that country*
20 *shall not, without prior approval of the appro-*
21 *priate Federal banking agency, after consulta-*
22 *tion with the State bank supervisor, where ap-*
23 *propriate, directly or indirectly, in the United*
24 *States—*

1 “(i) commence any line of business in
2 which the person was not engaged as of the
3 date the determination was published in the
4 Federal Register; or

5 “(ii) conduct business from any loca-
6 tion at which the person did not conduct
7 business as of that date.

8 “(B) EXCEPTION.—Subparagraph (A) shall
9 not apply with respect to companies described in
10 section 2(h)(2) of the Bank Holding Company
11 Act of 1956.

12 “(f) EXEMPTIONS FROM SANCTIONS.—

13 “(1) IN GENERAL.—Subsection (e) does not
14 apply to the subsidiaries in the United States of a
15 person of a foreign country if the Secretary deter-
16 mines that the banking laws and regulations of the
17 foreign country, as actually applied, meet or exceed—

18 “(A) the standards for treatment of subsidi-
19 aries of United States banking organizations
20 contained in the Second Banking Directive, and
21 in any amendment to the Second Banking Direc-
22 tive, if the Secretary determines that such
23 amendment—

24 “(i) does not restrict any operation,
25 activity, or authority to expand any oper-

1 *ation or activity, permitted under those*
2 *standards, of any subsidiary in the foreign*
3 *country of any such bank or bank holding*
4 *company; or*

5 *“(ii) is in accordance with national*
6 *treatment of subsidiaries of such banking*
7 *organizations; or*

8 *“(B) any set of standards that, taken as a*
9 *whole, is no less favorable to United States bank-*
10 *ing organizations than the standards referred to*
11 *in subparagraph (A).*

12 *“(2) STANDARDS FOR EXERCISE OF DISCRE-*
13 *TION.—In exercising any discretion under this sub-*
14 *section, the Secretary shall consider, with respect to*
15 *a bank, foreign bank, branch, agency, commercial*
16 *lending company, or other affiliated entity that is a*
17 *person of a foreign country and that is operating in*
18 *the United States—*

19 *“(A) the extent to which the foreign country*
20 *is progressing toward according national treat-*
21 *ment to United States banking organizations;*
22 *and*

23 *“(B) whether the foreign country permits*
24 *United States banking organizations to expand*
25 *their activities in that country, even if that*

1 *country determined that the United States did*
2 *not accord national treatment to the banking or-*
3 *ganizations of that country.*

4 “(g) *NEGOTIATIONS.*—

5 “(1) *IN GENERAL.*—*The Secretary—*

6 “*(A) shall initiate negotiations with any*
7 *foreign country with respect to which a deter-*
8 *mination made under subsection (c)(1) is in*
9 *effect; and*

10 “*(B) may initiate negotiations with any*
11 *foreign country which denies national treatment*
12 *to United States banking organizations to ensure*
13 *that the foreign country accords national treat-*
14 *ment to such organizations.*

15 “(2) *EXCEPTIONS.*—*Paragraph (1) does not re-*
16 *quire the Secretary to initiate negotiations with a for-*
17 *ign country if the Secretary—*

18 “*(A) determines that the negotiations—*

19 “*(i) would be so unlikely to result in*
20 *progress toward according national treat-*
21 *ment to United States banking organiza-*
22 *tions as to be a waste of effort; or*

23 “*(ii) would impair the economic inter-*
24 *ests of the United States; and*

1 “(B) gives written notice of that determina-
2 tion to the chairperson and the ranking minority
3 member of the Committee on Banking, Housing,
4 and Urban Affairs of the Senate and of the Com-
5 mittee on Banking, Finance and Urban Affairs
6 of the House of Representatives.

7 “(h) REPORT.—

8 “(1) CONTENTS OF REPORT.—Not later than De-
9 cember 1, 1994, and biennially thereafter, the Sec-
10 retary shall submit to the Congress a report that—

11 “(A) specifies the foreign countries identi-
12 fied under subsection (b);

13 “(B) if a determination is published under
14 subsection (d)(1) with respect to the foreign
15 country, provides the reasons therefor;

16 “(C) if the Secretary has not made or has
17 rescinded such a determination with respect to
18 the foreign country, provides the reasons therefor;

19 “(D) describes the results of any negotia-
20 tions conducted under subsection (g)(1) with the
21 foreign country; and

22 “(E) discusses the effectiveness of this sec-
23 tion in achieving the purpose of this section.

24 “(2) SUBMISSION OF REPORT.—The report re-
25 quired by paragraph (1) may be submitted as part of

1 *a report or update submitted under section 3602 of*
2 *the Omnibus Trade and Competitiveness Act of 1988.*

3 “(i) *CONSULTATION.*—*Consultation in accordance*
4 *with this subsection means consultation with the Secretary*
5 *of State, the Secretary of Commerce, the United States*
6 *Trade Representative, and the appropriate Federal banking*
7 *agency.*

8 “(j) *DEFINITIONS.*—*For purposes of this section, the*
9 *following definitions shall apply:*

10 “(1) *APPROPRIATE FEDERAL BANKING AGEN-*
11 *cy.*—*The term ‘appropriate Federal banking agen-*
12 *cy’—*

13 “(A) *in the case of a noninsured State bank*
14 *or branch and a representative office of a foreign*
15 *bank, means the Board of Governors of the Fed-*
16 *eral Reserve System; and*

17 “(B) *in any other case, has the same mean-*
18 *ing as in section 3 of the Federal Deposit Insur-*
19 *ance Act.*

20 “(2) *BANKING ORGANIZATION.*—*The term ‘bank-*
21 *ing organization’ means—*

22 “(A) *a depository institution, as defined in*
23 *section 3 of the Federal Deposit Insurance Act,*
24 *including a branch or subsidiary thereof;*

1 “(B) a bank holding company, as defined in
2 section 2 of the Bank Holding Company Act of
3 1956;

4 “(C) any company required to file informa-
5 tion pursuant to section 4(f)(6) of the Bank
6 Holding Company Act of 1956; and

7 “(D) a savings and loan holding company,
8 as defined in section 10(a)(1)(D) of the Home
9 Owners’ Loan Act.

10 “(3) NATIONAL TREATMENT.—A foreign country
11 accords ‘national treatment’ to United States banking
12 organizations if it offers them the same competitive
13 opportunities (including effective market access) as
14 are available to its domestic banking organizations.

15 “(4) PERSON OF A FOREIGN COUNTRY.—The
16 term ‘person of a foreign country’ means—

17 “(A) a person organized under the laws of
18 the foreign country;

19 “(B) a person that has its principal place
20 of business in the foreign country;

21 “(C) an individual who is—

22 “(i) a citizen of the foreign country, or

23 “(ii) domiciled in the foreign country;

24 and

1 “(D) a person that is directly or indirectly
2 controlled by a person or persons described in
3 subparagraph (A) or (B), or by an individual or
4 individuals described in subparagraph (C).

5 “(5) *REQUEST FOR AUTHORIZATION*.—The term
6 ‘request for authorization’—

7 “(A) means an application, registration,
8 notice, or other request to commence a financial
9 service or establish a financial services office that
10 is required under title LXII of the Revised Stat-
11 utes, the International Banking Act of 1978, the
12 Federal Reserve Act, the Home Owners’ Loan
13 Act, or the Bank Holding Company Act of 1956;
14 and

15 “(B) does not include any such request by
16 a company described in section 2(h)(2) of the
17 Bank Holding Company Act of 1956.

18 “(6) *SECOND BANKING DIRECTIVE*.—The term
19 ‘Second Banking Directive’ means the Second Council
20 Directive of December 15, 1989, on the Coordination
21 of Laws, Regulations, and Administrative Provisions
22 Relating to the Taking Up and Pursuit of the Busi-
23 ness of Credit Institutions and Amending Directive
24 77/780/EEC (89/646/EEC).

1 “(7) *SECRETARY*.—The term ‘Secretary’ means
2 the Secretary of the Treasury.”.

3 **SEC. 3. EFFECTUATING THE PRINCIPLE OF NATIONAL**
4 **TREATMENT FOR SECURITIES ORGANIZA-**
5 **TIONS.**

6 (a) *PURPOSE*.—The purpose of this section is to en-
7 courage foreign countries to accord national treatment to
8 United States securities organizations that operate or seek
9 to operate in those countries.

10 (b) *IDENTIFYING COUNTRIES THAT DENY NATIONAL*
11 *TREATMENT TO UNITED STATES SECURITIES ORGANIZA-*
12 *TIONS*.—The Secretary shall identify whether and to what
13 extent foreign countries deny national treatment to United
14 States securities organizations—

15 (1) according to the most recent report under sec-
16 tion 3602 of the Omnibus Trade and Competitiveness
17 Act of 1988 (or update thereof); or

18 (2) based upon more recent information that the
19 Secretary deems appropriate.

20 (c) *DETERMINING WHETHER DENIAL OF NATIONAL*
21 *TREATMENT HAS SIGNIFICANT ADVERSE EFFECT*.—The
22 Secretary shall determine whether the denial of national
23 treatment to United States securities organizations by a
24 foreign country identified under subsection (b) has a sig-
25 nificant adverse effect on such organizations.

1 (d) *PUBLICATION OF DETERMINATION.*—

2 (1) *IN GENERAL.*—If the Secretary determines
3 under subsection (c) that the denial of national treat-
4 ment to United States securities organizations by a
5 foreign country has a significant adverse effect on
6 such organizations, the Secretary—

7 (A) may, after initiating negotiations in
8 accordance with subsection (g), and after con-
9 sultation in accordance with subsection (h), pub-
10 lish that determination in the Federal Register;
11 and

12 (B) shall, not less frequently than annually,
13 in consultation with any department or agency
14 that the Secretary deems appropriate, review
15 each such determination to determine whether it
16 should be rescinded.

17 (2) *EXCEPTION FOR COUNTRIES THAT ARE PAR-*
18 *TIES TO CERTAIN AGREEMENTS GOVERNING FINAN-*
19 *CIAL SERVICES.*—Paragraph (1) shall not apply to a
20 foreign country to the extent that a determination
21 under that paragraph with respect to the foreign
22 country would permit action to be taken under this
23 section that would be inconsistent with a bilateral or
24 multilateral agreement that governs financial services
25 that the President entered into with that country and

1 *the Senate and the House of Representatives approved*
2 *before the date of enactment of this section.*

3 (e) *SANCTIONS.*—

4 (1) *ACTION BY SECRETARY OF TREASURY.*—

5 (A) *IN GENERAL.*—*The Secretary may, after*
6 *consultation in accordance with subsection (h),*
7 *recommend to the Commission that the Commis-*
8 *sion deny a request for authorization filed after*
9 *the date of publication of a determination under*
10 *subsection (d)(1) by a person of a foreign coun-*
11 *try listed in such publication if the Secretary de-*
12 *termines that—*

13 (i) *such action would assist the United*
14 *States in negotiations to eliminate dis-*
15 *crimination against United States securi-*
16 *ties organizations;*

17 (ii) *negotiations undertaken pursuant*
18 *to subsection (f) are not likely to result in*
19 *an agreement that eliminates the denial of*
20 *national treatment; or*

21 (iii) *the country has not adequately*
22 *adhered to an agreement reached as a result*
23 *of negotiations undertaken pursuant to sub-*
24 *section (f).*

1 (B) *EXERCISE OF AUTHORITY.*—The au-
2 thority of subparagraph (A) shall be exercised
3 according to the specific direction (if any) of the
4 President.

5 (C) *COMPLIANCE EXCEPTIONS.*—The Com-
6 mission shall comply with the recommendation
7 of the Secretary under subparagraph (A), unless
8 the Commission determines, in writing, and
9 transmits such determination to the Secretary
10 and to the Congress, that such recommendation
11 would likely result in a serious adverse impact
12 on—

13 (i) the maintenance of fair and orderly
14 securities markets; or

15 (ii) the protection of investors.

16 (2) *NOTICE REQUIRED TO ACQUIRE REGISTERED*
17 *SECURITIES ORGANIZATION.*—

18 (A) *IN GENERAL.*—If a determination is
19 published under subsection (d)(1) with respect to
20 a foreign country, no person of that foreign
21 country, acting directly or indirectly, may ac-
22 quire control of any registered securities organi-
23 zation, unless the Commission has been given no-
24 tice not less than 90 days in advance of the ac-
25 quisition, in such form as the Commission shall

1 *prescribe by rule and containing such informa-*
2 *tion as the Commission may require by rule or*
3 *order.*

4 *(B) NOTIFYING SECRETARY.—The Commis-*
5 *sion shall promptly notify the Secretary of any*
6 *notice received under subparagraph (A).*

7 *(C) EXTENDING 90-DAY PERIOD.—The Com-*
8 *mission may, by order, extend for an additional*
9 *180 days the period during which the Commis-*
10 *sion may disapprove a notice received under sub-*
11 *paragraph (A).*

12 *(3) STANDARDS FOR EXERCISE OF DISCRE-*
13 *TION.—In exercising any discretion under this sub-*
14 *section, the Secretary shall consider, with respect to*
15 *a securities organization that is a person of a foreign*
16 *country and that is operating in the United States—*

17 *(A) the extent to which the foreign country*
18 *is progressing toward according national treat-*
19 *ment to United States securities organizations;*
20 *and*

21 *(B) whether the foreign country permits*
22 *United States securities organizations to expand*
23 *their activities in that country, even if that*
24 *country determined that the United States did*

1 *not accord national treatment to securities orga-*
2 *nizations of that country.*

3 (f) *NEGOTIATIONS.—*

4 (1) *IN GENERAL.—The Secretary—*

5 (A) *shall initiate negotiations with any for-*
6 *foreign country with respect to which a determina-*
7 *tion under subsection (c)(1) is in effect; and*

8 (B) *may initiate negotiations with any for-*
9 *foreign country which denies national treatment to*
10 *United States securities organizations to ensure*
11 *that the foreign country accords national treat-*
12 *ment to such organizations.*

13 (2) *EXCEPTIONS.—Paragraph (1) does not re-*
14 *quire the Secretary to initiate negotiations with a for-*
15 *foreign country if the Secretary—*

16 (A) *determines that the negotiations—*

17 (i) *would be so unlikely to result in*
18 *progress toward according national treat-*
19 *ment to United States securities organiza-*
20 *tions as to be a waste of effort; or*

21 (ii) *would impair the economic inter-*
22 *ests of the United States; and*

23 (B) *gives written notice of that determina-*
24 *tion to the chairperson and the ranking minority*
25 *member of the Committee on Banking, Housing,*

1 *and Urban Affairs of the Senate and of the Com-*
2 *mittee on Energy and Commerce of the House of*
3 *Representatives.*

4 (g) *REPORT.—*

5 (1) *CONTENTS OF REPORT.—Not later than De-*
6 *cember 1, 1994, and biennially thereafter, the Sec-*
7 *retary shall submit to the Congress a report that—*

8 (A) *specifies the foreign countries identified*
9 *under subsection (b);*

10 (B) *if a determination is published under*
11 *subsection (d)(1) with respect to the foreign*
12 *country, provides the reasons therefor;*

13 (C) *if the Secretary has not made, or has*
14 *rescinded, a determination under subsection*
15 *(d)(1) with respect to the foreign country, pro-*
16 *vides the reasons therefor;*

17 (D) *describes the results of any negotiations*
18 *conducted under subsection (f)(1) with the for-*
19 *ign country; and*

20 (E) *discusses the effectiveness of this section*
21 *in achieving the purpose of this section.*

22 (2) *SUBMISSION OF REPORT.—The report re-*
23 *quired by paragraph (1) may be submitted as part of*
24 *a report or update submitted under section 3602 of*
25 *the Omnibus Trade and Competitiveness Act of 1988.*

1 (h) *CONSULTATION.*—*Consultation in accordance with*
2 *this subsection means consultation with the Secretary of*
3 *State, the Secretary of Commerce, the United States Trade*
4 *Representative, and the Commission.*

5 (i) *DEFINITIONS.*—*For purposes of this section, the fol-*
6 *lowing definitions shall apply:*

7 (1) *BROKER.*—*The term “broker” has the same*
8 *meaning as in section 3(a)(4) of the Securities Ex-*
9 *change Act of 1934.*

10 (2) *DEALER.*—*The term “dealer” has the same*
11 *meaning as in section 3(a)(5) of the Securities Ex-*
12 *change Act of 1934.*

13 (3) *COMMISSION.*—*The term “Commission”*
14 *means the Securities and Exchange Commission.*

15 (4) *INVESTMENT ADVISER.*—*The term “invest-*
16 *ment adviser” has the same meaning as in section*
17 *202(a)(11) of the Investment Advisers Act of 1940.*

18 (5) *NATIONAL TREATMENT.*—*A foreign country*
19 *accords “national treatment” to United States securi-*
20 *ties organizations if it offers them the same competi-*
21 *tive opportunities (including effective market access)*
22 *as are available to its domestic securities organiza-*
23 *tions.*

24 (6) *PERSON OF A FOREIGN COUNTRY.*—*The term*
25 *“person of a foreign country” means—*

1 (A) a person organized under the laws of
2 the foreign country;

3 (B) a person that has its principal place of
4 business in the foreign country;

5 (C) an individual who is—

6 (i) a citizen of the foreign country; or

7 (ii) domiciled in the foreign country;

8 and

9 (D) a person that is directly or indirectly
10 controlled by a person described in subparagraph
11 (A) or (B), or by an individual described in sub-
12 paragraph (C).

13 (7) *REQUEST FOR AUTHORIZATION.*—The term
14 “request for authorization” means an application,
15 registration, notice, or other request to commence a fi-
16 nancial service or establish a financial services office
17 that is required under the Investment Company Act
18 of 1940, the Investment Advisers Act of 1940, or the
19 Securities Exchange Act of 1934.

20 (8) *SECRETARY.*—The term “Secretary” means
21 the Secretary of the Treasury.

22 (9) *SECURITIES ORGANIZATION.*—The term “se-
23 curities organization” means a broker, a dealer, or an
24 investment adviser.

1 **SEC. 4. FINANCIAL INTERDEPENDENCE STUDY.**

2 *Subtitle G of title III of the Omnibus Trade and Com-*
3 *petitiveness Act of 1988 (22 U.S.C. 5351 et seq.) is amended*
4 *by adding at the end the following new section:*

5 **“SEC. 3605. FINANCIAL INTERDEPENDENCE STUDY.**

6 *“(a) INVESTIGATION REQUIRED.—The Secretary, in*
7 *consultation and coordination with the Securities and Ex-*
8 *change Commission, the Federal banking agencies, and any*
9 *other appropriate Federal department or agency designated*
10 *by the Secretary, shall conduct an investigation to deter-*
11 *mine—*

12 *“(1) the extent of the interdependence of the fi-*
13 *ancial services sectors of the United States and for-*
14 *ign countries—*

15 *“(A) whose financial services institutions*
16 *provide financial services in the United States;*
17 *or*

18 *“(B) whose persons have substantial owner-*
19 *ship interests in United States financial services*
20 *institutions; and*

21 *“(2) the economic, strategic, and other con-*
22 *sequences of that interdependence for the United*
23 *States.*

24 *“(b) REPORT.—*

25 *“(1) REPORT REQUIRED.—Not later than 3*
26 *years after the date of enactment of this section, the*

1 *Secretary shall submit a report on the results of the*
2 *investigation under subsection (a) to the President,*
3 *the Congress, the Securities and Exchange Commis-*
4 *sion, the Federal banking agencies, and any other ap-*
5 *propriate Federal agency or department, as des-*
6 *ignated by the Secretary.*

7 “(2) *CONTENTS OF REPORT.*—*The report re-*
8 *quired under paragraph (1) shall—*

9 “(A) *describe the activities and estimate the*
10 *scope of financial services activities conducted by*
11 *United States financial services institutions in*
12 *foreign markets (differentiated according to*
13 *major foreign markets);*

14 “(B) *describe the activities and estimate the*
15 *scope of financial services activities conducted by*
16 *foreign financial services institutions in the*
17 *United States (differentiated according to the*
18 *most significant home countries or groups of*
19 *home countries);*

20 “(C) *estimate the number of jobs created in*
21 *the United States by financial services activities*
22 *conducted by foreign financial services institu-*
23 *tions and the number of jobs created in foreign*
24 *countries by financial service activities con-*

1 *ducted by United States financial services insti-*
2 *tutions;*

3 “(D) estimate the additional jobs and reve-

4 *nues (both foreign and domestic) that would be*

5 *created by the activities of United States finan-*

6 *cial services institutions in foreign countries if*

7 *those countries offered such institutions the same*

8 *competitive opportunities (including effective*

9 *market access) as are available to the domestic*

10 *financial services institutions of those countries;*

11 “(E) describe the extent to which foreign fi-

12 *nancial services institutions discriminate*

13 *against United States persons in procurement,*

14 *employment, the provision of credit or other fi-*

15 *nancial services, or otherwise;*

16 “(F) describe the extent to which foreign fi-

17 *nancial services institutions and other persons*

18 *from foreign countries purchase or otherwise fa-*

19 *cilitate the marketing from the United States of*

20 *government and private debt instruments and*

21 *private equity instruments;*

22 “(G) describe how the interdependence of the

23 *financial services sectors of the United States*

24 *and foreign countries affects the autonomy and*

25 *effectiveness of United States monetary policy;*

1 “(H) describe the extent to which United
2 States companies rely on financing by or
3 through foreign financial services institutions
4 and the consequences of such reliance (including
5 disclosure of proprietary information) for the in-
6 dustrial competitiveness and national security of
7 the United States;

8 “(I) describe the extent to which foreign fi-
9 nancial services institutions, in purchasing high
10 technology products such as computers and tele-
11 communications equipment, favor manufacturers
12 from their home countries over United States
13 manufacturers; and

14 “(J) contain other appropriate information
15 relating to the results of the investigation re-
16 quired by subsection (a).

17 “(c) DEFINITIONS.—For purposes of this section the
18 following definitions shall apply:

19 “(1) DEPOSITORY INSTITUTION AND DEPOSITORY
20 INSTITUTION HOLDING COMPANY.—The terms ‘deposi-
21 tory institution’ and ‘depository institution holding
22 company’ have the same meanings as in section 3 of
23 the Federal Deposit Insurance Act.

1 “(2) *FEDERAL BANKING AGENCIES.*—The term
2 ‘Federal banking agencies’ has the same meaning as
3 in section 3 of the Federal Deposit Insurance Act.

4 “(3) *FINANCIAL SERVICES INSTITUTION.*—The
5 term ‘financial services institution’ means—

6 “(A) a broker, dealer, underwriter, clearing
7 agency, transfer agent, or information processor
8 with respect to securities, including government
9 and municipal securities;

10 “(B) an investment company, investment
11 manager, investment adviser, indenture trustee,
12 or any depository institution, insurance com-
13 pany, or other organization operating as a fidu-
14 ciary, trustee, underwriter, or other financial
15 services provider;

16 “(C) any depository institution or deposi-
17 tory institution holding company; and

18 “(D) any other entity providing financial
19 services.

20 “(4) *SECRETARY.*—The term ‘Secretary’ means
21 the Secretary of the Treasury.”.

22 **SEC. 5. CONFORMING AMENDMENTS.**

23 (a) *REPORTS ON FOREIGN TREATMENT OF UNITED*
24 *STATES FINANCIAL INSTITUTIONS.*—Section 3602 of the

1 *Omnibus Trade and Competitiveness Act of 1988 (22*
2 *U.S.C. 5352) is amended—*

3 (1) *in the first sentence, by inserting “with up-*
4 *dates on significant developments every 2 years fol-*
5 *lowing submission of the 1994 report,” before “the*
6 *Secretary of the Treasury”; and*

7 (2) *by adding at the end the following: “For pur-*
8 *poses of this section, a foreign country denies national*
9 *treatment to United States entities unless the foreign*
10 *country offers such entities the same competitive op-*
11 *portunities (including effective market access) as are*
12 *available to the domestic entities of the foreign coun-*
13 *try.”.*

14 (b) *NEGOTIATIONS TO PROMOTE FAIR TRADE IN FI-*
15 *NANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus*
16 *Trade and Competitiveness Act of 1988 (22 U.S.C.*
17 *5353(a)(1)) is amended by inserting “effective” before*
18 *“access”.*

19 (c) *PRIMARY DEALERS IN GOVERNMENT DEBT IN-*
20 *STRUMENTS.—Section 3502(b)(1) of the Omnibus Trade*
21 *and Competitiveness Act of 1988 (22 U.S.C. 5342(b)(1)) is*
22 *amended—*

23 (1) *by striking “does not accord to” and insert-*
24 *ing “does not offer”; and*

1 (2) by striking “as such country accords to” and
2 inserting “(including effective market access) as are
3 available to”.

S 1527 RS—2

S 1527 RS—3

S 1527 RS—4

S 1527 RS—5