**Calendar No. 309**

103D CONGRESS
1ST SESSION

# S. 1627

**[Report No. 103–189]**

# A BILL

To implement the North American Free Trade Agreement.

NOVEMBER 18 (legislative day, NOVEMBER 2), 1993

Reported without amendment

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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# Calendar No. 309

103D CONGRESS
1ST SESSION

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**[Report No. 103–189]**

To implement the North American Free Trade Agreement.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 4 (legislative day, NOVEMBER 2), 1993

Mr. MITCHELL (for himself and Mr. DOLE) (by request) introduced the following bill; which was read twice and referred jointly to the Committees on Finance, Agriculture, Nutrition, and Forestry, Commerce, Science, and Transportation, Governmental Affairs, the Judiciary, and Foreign Relations pursuant to 19 U.S.C. 2191(c)

NOVEMBER 18 (legislative day, NOVEMBER 2), 1993

Reported by Mr. MOYNIHAN (from the Committee on Finance), and on behalf of Mr. LEAHY (from the Committee on Agriculture, Nutrition, and Forestry), Mr. HOLLINGS (from the Committee on Commerce, Science, and Transportation), Mr. GLENN (from the Committee on Governmental Affairs), Mr. BIDEN (from the Committee on the Judiciary), and Mr. PELL (from the Committee on Foreign Relations), without amendment

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# A BILL

To implement the North American Free Trade Agreement.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''North American Free Trade Agreement Implementation Act''.

(b) TABLE OF CONTENTS.—

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**SEC. 2. DEFINITIONS.**

For purposes of this Act:

(1) AGREEMENT.—The term ''Agreement'' means the North American Free Trade Agreement approved by the Congress under section 101(a).

(2) HTS.—The term ''HTS'' means the Harmonized Tariff Schedule of the United States.

(3) MEXICO.—Any reference to Mexico shall be considered to be a reference to the United Mexican States.

(4) NAFTA COUNTRY.—Except as provided in section 202, the term ''NAFTA country'' means—

(A) Canada for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and

(B) Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico.

(5) INTERNATIONAL TRADE COMMISSION.—The term ''International Trade Commission'' means the United States International Trade Commission.

(6) TRADE REPRESENTATIVE.—The term ''Trade Representative'' means the United States Trade Representative.

# TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE NORTH AMERICAN FREE TRADE AGREEMENT

## SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE NORTH AMERICAN FREE TRADE AGREEMENT.

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

(1) the North American Free Trade Agreement entered into on December 17, 1992, with the Governments of Canada and Mexico and submitted to the Congress on November 4, 1993; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on November 4, 1993.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—The President is authorized to exchange notes with the Government of Canada or Mexico providing for the entry into force, on or after January 1, 1994, of the Agreement for the United States with respect to such country at such time as—

(1) the President—

(A) determines that such country has implemented the statutory changes necessary to bring that country into compliance with its obligations under the Agreement and has made provision to implement the Uniform Regulations provided for under article 511 of the Agreement regarding the interpretation, application, and administration of the rules of origin, and

(B) transmits a report to the House of Representatives and the Senate setting forth the determination under subparagraph (A) and including, in the case of Mexico, a description of the specific measures taken by that country to—

(i) bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement, and

(ii) otherwise ensure the effective implementation of the binational panel review process under chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations; and

(2) the Government of such country exchanges notes with the United States providing for the entry into force of the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation for that country and the United States.

**SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.**

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

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

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

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

(ii) the protection of the environment, or

(iii) motor carrier or worker safety; or

(B) to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974;

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) FEDERAL-STATE CONSULTATION.—

(A) IN GENERAL.—Upon the enactment of this Act, the President shall, through the intergovernmental policy advisory committees on trade established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984, consult with the States for the purpose of achieving conformity of State laws and practices with the Agreement.

(B) FEDERAL-STATE CONSULTATION PROCESS.—The Trade Representative shall establish within the Office of the United States Trade Representative a Federal-State consultation process for addressing issues relating to the Agreement that directly relate to, or will potentially have a direct impact on, the States. The Federal-State consultation process shall include procedures under which—

(i) the Trade Representative will assist the States in identifying those State laws that may not conform with the Agreement but may be maintained under the Agreement by reason of being in effect before the Agreement entered into force;

(ii) the States will be informed on a continuing basis of matters under the Agreement that directly relate to, or will potentially have a direct impact on, the States;

(iii) the States will be provided opportunity to submit, on a continuing basis, to the Trade Representative information and advice with respect to matters referred to in clause (ii);

(iv) the Trade Representative will take into account the information and advice received from the States under clause (iii) when formulating United States positions regarding matters referred to in clause (ii); and

(v) the States will be involved (including involvement through the inclusion of appropriate representatives of the States)

to the greatest extent practicable at each stage of the development of United States positions regarding matters referred to in clause (ii) that will be addressed by committees, subcommittees, or working groups established under the Agreement or through dispute settlement processes provided for under the Agreement.

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

(2) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(3) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ''State law'' includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under—

(A) the Agreement or by virtue of Congressional approval thereof, or

(B) the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement, the North American Agreement on Environmental Cooperation, or the North American Agreement on Labor Cooperation.

**SEC. 103. CONSULTATION AND LAYOVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.**

(a) CONSULTATION AND LAYOVER REQUIREMENTS.—If a provision of this Act provides that the implementation of an action by the President by proclamation

is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

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

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974, and

(B) the International Trade Commission;

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

(A) the action proposed to be proclaimed and the reasons therefor, and

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

(3) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action, has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the

authority of this Act that is not subject to the consultation and layover requirements under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

**SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.**

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

(1) the President may proclaim such actions; and

(2) other appropriate officers of the United States Government may issue such regulations;

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force. The 15-day restriction in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement; except that interim or initial regulations to implement those Uniform Regulations regarding rules of origin provided for under article 511 of the Agreement shall be issued no later than the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

**SEC. 105. UNITED STATES SECTION OF THE NAFTA SECRETARIAT.**

(a) ESTABLISHMENT OF THE UNITED STATES SECTION.—The President is authorized to establish within any department or agency of the United States Government a United States Section of the Secretariat established under chapter 20 of the Agreement. The United States Section, subject to the oversight of the interagency group established under section 402, shall carry out its functions within the Secretariat to facilitate the operation

of the Agreement, including the operation of chapters 19 and 20 of the Agreement and the work of the panels, extraordinary challenge committees, special committees, and scientific review boards convened under those chapters. The United States Section may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 1993 to the department or agency within which the United States Section is established the lesser of—

(1) such sums as may be necessary; or

(2) $2,000,000;

for the establishment and operations of the United States Section and for the payment of the United States share of the expenses of binational panels and extraordinary challenge committees convened under chapter 19, and of the expenses incurred in dispute settlement proceedings under chapter 20, of the Agreement.

(c) REIMBURSEMENT OF CERTAIN EXPENSES.—If, in accordance with Annex 2002.2 of the Agreement, the Canadian Section or the Mexican Section of the Secretariat provides funds to the United States Section during any fiscal year, as reimbursement for expenses by the Canadian Section or the Mexican Section in connection with

settlement proceedings under chapter 19 or 20 of the Agreement, the United States Section may retain and use such funds to carry out the functions described in subsection (a).

**SEC. 106. APPOINTMENTS TO CHAPTER 20 PANEL PROCEEDINGS.**

(a) CONSULTATION.—The Trade Representative shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the selection and appointment of candidates for the rosters described in article 2009 of the Agreement.

(b) SELECTION OF INDIVIDUALS WITH ENVIRONMENTAL EXPERTISE.—The United States shall, to the maximum extent practicable, encourage the selection of individuals who have expertise and experience in environmental issues for service in panel proceedings under chapter 20 of the Agreement to hear any challenge to a United States or State environmental law.

**SEC. 107. TERMINATION OR SUSPENSION OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.**

Section 501(c) of the United States-Canada Free-Trade Implementation Act of 1988 (19 U.S.C. 2112 note) is amended to read as follows:

"(c) TERMINATION OR SUSPENSION OF AGREEMENT.—

"(1) TERMINATION OF AGREEMENT.—On the date the Agreement ceases to be in force, the provisions of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.

"(2) EFFECT OF AGREEMENT SUSPENSION.—An agreement by the United States and Canada to suspend the operation of the Agreement shall not be deemed to cause the Agreement to cease to be in force within the meaning of paragraph (1).

"(3) SUSPENSION RESULTING FROM NAFTA.—On the date the United States and Canada agree to suspend the operation of the Agreement by reason of the entry into force between them of the North American Free Trade Agreement, the following provisions of this Act are suspended and shall remain suspended until such time as the suspension of the Agreement may be terminated:

"(A) Sections 204(a) and (b) and 205(a).

"(B) Sections 302 and 304(f).

"(C) Sections 404, 409, and 410(b).".

**SEC. 108. CONGRESSIONAL INTENT REGARDING FUTURE ACCESSIONS.**

(a) IN GENERAL.—Section 101(a) may not be construed as conferring Congressional approval of the entry into force of the Agreement for the United States with respect to countries other than Canada and Mexico.

(b) FUTURE FREE TRADE AREA NEGOTIATIONS.—

(1) FINDINGS.—The Congress makes the following findings:

(A) Efforts by the United States to obtain greater market opening through multilateral negotiations have not produced agreements that fully satisfy the trade negotiating objectives of the United States.

(B) United States trade policy should provide for additional mechanisms with which to pursue greater market access for United States exports of goods and services and opportunities for export-related investment by United States persons.

(C) Among the additional mechanisms should be a system of bilateral and multilateral trade agreements that provide greater market access for United States exports and opportunities for export-related investment by United States persons.

(D) The system of trade agreements can and should be structured to be consistent with, and complementary to, existing international obligations of the United States and ongoing multilateral efforts to open markets.

(2) REPORT ON SIGNIFICANT MARKET OPENING.—No later than May 1, 1994, and May 1, 1997, the Trade Representative shall submit to the President, and to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the ''appropriate Congressional committees''), a report which lists those foreign countries—

(A) that—

(i) currently provide fair and equitable market access for United States exports of goods and services and opportunities for export-related investment by United States persons, beyond what is required by existing multilateral trade agreements or obligations; or

(ii) have made significant progress in opening their markets to United States exports of goods and services and export-re-

lated investment by United States persons; and

(B) the further opening of whose markets has the greatest potential to increase United States exports of goods and services and export-related investment by United States persons, either directly or through the establishment of a beneficial precedent.

(3) PRESIDENTIAL DETERMINATION.—The President, on the basis of the report submitted by the Trade Representative under paragraph (2), shall determine with which foreign country or countries, if any, the United States should seek to negotiate a free trade area agreement or agreements.

(4) RECOMMENDATIONS ON FUTURE FREE TRADE AREA NEGOTIATIONS.—No later than July 1, 1994, and July 1, 1997, the President shall submit to the appropriate Congressional committees a written report that contains—

(A) recommendations for free trade area negotiations with each foreign country selected under paragraph (3);

(B) with respect to each country selected, the specific negotiating objectives that are nec-

essary to meet the objectives of the United States under this section; and

(C) legislative proposals to ensure adequate consultation with the Congress and the private sector during the negotiations, advance Congressional approval of the negotiations recommended by the President, and Congressional approval of any trade agreement entered into by the President as a result of the negotiations.

(5) GENERAL NEGOTIATING OBJECTIVES.—The general negotiating objectives of the United States under this section are to obtain—

(A) preferential treatment for United States goods;

(B) national treatment and, where appropriate, equivalent competitive opportunity for United States services and foreign direct investment by United States persons;

(C) the elimination of barriers to trade in goods and services by United States persons through standards, testing, labeling, and certification requirements;

(D) nondiscriminatory government procurement policies and practices with respect to United States goods and services;

(E) the elimination of other barriers to market access for United States goods and services, and the elimination of barriers to foreign direct investment by United States persons;

(F) the elimination of acts, policies, and practices which deny fair and equitable market opportunities, including foreign government toleration of anticompetitive business practices by private firms or among private firms that have the effect of restricting, on a basis that is inconsistent with commercial considerations, purchasing by such firms of United States goods and services;

(G) adequate and effective protection of intellectual property rights of United States persons, and fair and equitable market access for United States persons that rely upon intellectual property protection;

(H) the elimination of foreign export and domestic subsidies that distort international trade in United States goods and services or cause material injury to United States industries;

(I) the elimination of all export taxes;

(J) the elimination of acts, policies, and practices which constitute export targeting; and

(K) monitoring and effective dispute settlement mechanisms to facilitate compliance with the matters described in subparagraphs (A) through (J).

**SEC. 109. EFFECTIVE DATES; EFFECT OF TERMINATION OF NAFTA STATUS.**

(a) EFFECTIVE DATES.—

(1) IN GENERAL.—This title (other than the amendment made by section 107) takes effect on the date of the enactment of this Act.

(2) SECTION 107 AMENDMENT.—The amendment made by section 107 takes effect on the date the Agreement enters into force between the United States and Canada.

(b) TERMINATION OF NAFTA STATUS.—During any period in which a country ceases to be a NAFTA country, sections 101 through 106 shall cease to have effect with respect to such country.

# TITLE II—CUSTOMS PROVISIONS

**SEC. 201. TARIFF MODIFICATIONS.**

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 302, 305, 307, 308, and 703 and Annexes 302.2, 307.1, 308.1, 308.2, 300-B, 703.2, and 703.3 of the Agreement.

(2) EFFECT ON MEXICAN GSP STATUS.—Notwithstanding section 502(a)(2) of the Trade Act of 1974 (19 U.S.C. 2462(a)(2)), the President shall terminate the designation of Mexico as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement between the United States and Mexico.

(b) OTHER TARIFF MODIFICATIONS.—

(1) IN GENERAL.—Subject to paragraph (2) and the consultation and layover requirements of section 103(a), the President may proclaim—

(A) such modifications or continuation of any duty,

(B) such modifications as the United States may agree to with Mexico or Canada regarding the staging of any duty treatment set forth in Annex 302.2 of the Agreement,

(C) such continuation of duty-free or excise treatment, or

(D) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada or Mexico provided for by the Agreement.

(2) SPECIAL RULE FOR ARTICLES WITH TARIFF PHASEOUT PERIODS OF MORE THAN 10 YEARS.—The President may not consider a request to accelerate the staging of duty reductions for an article for which the United States tariff phaseout period is more than 10 years if a request for acceleration with respect to such article has been denied in the preceding 3 calendar years.

(c) CONVERSION TO AD VALOREM RATES FOR CERTAIN TEXTILES.—For purposes of subsections (a) and (b), with respect to an article covered by Annex 300–B of the Agreement imported from Mexico for which the base

rate in the Schedule of the United States in Annex 300–B is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

**SEC. 202. RULES OF ORIGIN.**

(a) ORIGINATING GOODS.—

(1) IN GENERAL.—For purposes of implementing the tariff treatment and quantitative restrictions provided for under the Agreement, except as otherwise provided in this section, a good originates in the territory of a NAFTA country if—

(A) the good is wholly obtained or produced entirely in the territory of one or more of the NAFTA countries;

(B)(i) each nonoriginating material used in the production of the good—

(I) undergoes an applicable change in tariff classification set out in Annex 401 of the Agreement as a result of production occurring entirely in the territory of one or more of the NAFTA countries; or

(II) where no change in tariff classification is required, the good otherwise satisfies the applicable requirements of such Annex; and

(ii) the good satisfies all other applicable requirements of this section;

(C) the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials; or

(D) except for a good provided for in chapters 61 through 63 of the HTS, the good is produced entirely in the territory of one or more of the NAFTA countries, but one or more of the nonoriginating materials, that are provided for as parts under the HTS and are used in the production of the good, does not undergo a change in tariff classification because—

(i) the good was imported into the territory of a NAFTA country in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the HTS; or

(ii)(I) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings; or

(II) the subheading for the good provides for and specifically describes both the good itself and its parts.

(2) SPECIAL RULES.—

(A) FOREIGN-TRADE ZONES.—Subparagraph (B) of paragraph (1) shall not apply to a good produced in a foreign-trade zone or subzone (established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act) that is entered for consumption in the customs territory of the United States.

(B) REGIONAL VALUE-CONTENT REQUIREMENT.—For purposes of subparagraph (D) of paragraph (1), a good shall be treated as originating in a NAFTA country if the regional value-content of the good, determined in accordance with subsection (b), is not less than 60 percent where the transaction value method is used, or not less than 50 percent where the net cost method is used, and the good satisfies all other applicable requirements of this section.

(b) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—Except as provided in paragraph (5), the regional value-content of a good shall

be calculated, at the choice of the exporter or producer of the good, on the basis of—

(A) the transaction value method described in paragraph (2); or

(B) the net cost method described in paragraph (3).

(2) TRANSACTION VALUE METHOD.—

(A) IN GENERAL.—An exporter or producer may calculate the regional value-content of a good on the basis of the following transaction value method:

$$\text{RVC} = \frac{\text{TV} - \text{VNM}}{\text{TV}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

(i) The term ''RVC'' means the regional value-content, expressed as a percentage.

(ii) The term ''TV'' means the transaction value of the good adjusted to a F.O.B. basis.

(iii) The term ''VNM'' means the value of nonoriginating materials used by the producer in the production of the good.

(3) NET COST METHOD.—

(A) IN GENERAL.—An exporter or producer may calculate the regional value-content of a good on the basis of the following net cost method:

$$\text{RVC} = \frac{\text{NC} - \text{VNM}}{\text{NC}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

(i) The term ''RVC'' means the regional value-content, expressed as a percentage.

(ii) The term ''NC'' means the net cost of the good.

(iii) The term ''VNM'' means the value of nonoriginating materials used by the producer in the production of the good.

(4) VALUE OF NONORIGINATING MATERIALS USED IN ORIGINATING MATERIALS.—Except as provided in subsection (c)(1), and for a motor vehicle identified in subsection (c)(2) or a component identified in Annex 403.2 of the Agreement, the value of nonoriginating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value-content of the good under paragraph (2) or (3), include the value of

nonoriginating materials used to produce originating materials that are subsequently used in the production of the good.

(5) NET COST METHOD MUST BE USED IN CERTAIN CASES.—An exporter or producer shall calculate the regional value-content of a good solely on the basis of the net cost method described in paragraph (3), if—

(A) there is no transaction value for the good;

(B) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code;

(C) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the good is sold exceeds 85 percent of the producer's total sales of such goods during that period;

(D) the good is—

(i) a motor vehicle provided for in heading 8701 or 8702, subheadings

8703.21 through 8703.90, or heading 8704, 8705, or 8706;

(ii) identified in Annex 403.1 or 403.2 of the Agreement and is for use in a motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;

(iii) provided for in subheadings 6401.10 through 6406.10; or

(iv) a word processing machine provided for in subheading 8469.10.00;

(E) the exporter or producer chooses to accumulate the regional value-content of the good in accordance with subsection (d); or

(F) the good is designated as an intermediate material under paragraph (10) and is subject to a regional value-content requirement.

(6) NET COST METHOD ALLOWED FOR ADJUSTMENTS.—If an exporter or producer of a good calculates the regional value-content of the good on the basis of the transaction value method and a NAFTA country subsequently notifies the exporter or producer, during the course of a verification conducted in accordance with chapter 5 of the Agreement, that the transaction value of the good or the value of any

material used in the production of the good must be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer may calculate the regional value-content of the good on the basis of the net cost method.

(7) REVIEW OF ADJUSTMENT.—Nothing in paragraph (6) shall be construed to prevent any review or appeal available in accordance with article 510 of the Agreement with respect to an adjustment to or a rejection of—

(A) the transaction value of a good; or

(B) the value of any material used in the production of a good.

(8) CALCULATING NET COST.—The producer may, consistent with regulations implementing this section, calculate the net cost of a good under paragraph (3), by—

(A) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and reasonably allocating the resulting net cost of those goods to the good;

(B) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the good; or

(C) reasonably allocating each cost that is part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(9) VALUE OF MATERIAL USED IN PRODUCTION.—Except as provided in paragraph (11), the value of a material used in the production of a good—

(A) shall—

(i) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code; or

(ii) in the event that there is no transaction value or the transaction value of the

material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code; and

(B) if not included under clause (i) or (ii) of subparagraph (A), shall include—

(i) freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;

(ii) duties, taxes, and customs brokerage fees paid on the material in the territory of one or more of the NAFTA countries; and

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

(10) INTERMEDIATE MATERIAL.—Except for goods described in subsection (c)(1), any self-produced material, other than a component identified in Annex 403.2 of the Agreement, that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value-content

of the good under paragraph (2) or (3); provided that if the intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is used in the production of the intermediate material may be designated by the producer as an intermediate material.

(11) VALUE OF INTERMEDIATE MATERIAL.—The value of an intermediate material shall be—

(A) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to the intermediate material; or

(B) the aggregate of each cost that is part of the total cost incurred with respect to the intermediate material that can be reasonably allocated to that intermediate material.

(12) INDIRECT MATERIAL.—The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.

(c) AUTOMOTIVE GOODS.—

(1) PASSENGER VEHICLES AND LIGHT TRUCKS, AND THEIR AUTOMOTIVE PARTS.—For purposes of

calculating the regional value-content under the net cost method for—

(A) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, or

(B) a good provided for in the tariff provisions listed in Annex 403.1 of the Agreement, that is subject to a regional value-content requirement and is for use as original equipment in the production of a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31,

the value of nonoriginating materials used by the producer in the production of the good shall be the sum of the values of all nonoriginating materials, determined in accordance with subsection (b)(9) at the time the nonoriginating materials are received by the first person in the territory of a NAFTA country who takes title to them, that are imported from out-

side the territories of the NAFTA countries under the tariff provisions listed in Annex 403.1 of the Agreement and are used in the production of the good or that are used in the production of any material used in the production of the good.

(2) OTHER VEHICLES AND THEIR AUTOMOTIVE PARTS.—For purposes of calculating the regional value-content under the net cost method for a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00, or a component identified in Annex 403.2 of the Agreement for use as original equipment in the production of the motor vehicle, the value of nonoriginating materials used by the producer in the production of the good shall be the sum of—

(A) for each material used by the producer listed in Annex 403.2 of the Agreement, whether or not produced by the producer, at the choice of the producer and determined in accordance with subsection (b), either—

(i) the value of such material that is nonoriginating, or

(ii) the value of nonoriginating materials used in the production of such material; and

(B) the value of any other nonoriginating material used by the producer that is not listed in Annex 403.2 of the Agreement determined in accordance with subsection (b).

(3) AVERAGING PERMITTED.—

(A) IN GENERAL.—For purposes of calculating the regional value-content of a motor vehicle described in paragraph (1) or (2), the producer may average its calculation over its fiscal year, using any of the categories described in subparagraph (B), on the basis of either all motor vehicles in the category or on the basis of only the motor vehicles in the category that are exported to the territory of one or more of the other NAFTA countries.

(B) CATEGORY DESCRIBED.—A category is described in this subparagraph if it is—

(i) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a NAFTA country;

(ii) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(iii) the same model line of motor vehicles produced in the territory of a NAFTA country; or

(iv) if applicable, the basis set out in Annex 403.3 of the Agreement.

(4) ANNEX 403.1 AND ANNEX 403.2.—For purposes of calculating the regional value-content for any or all goods provided for in a tariff provision listed in Annex 403.1 of the Agreement, or a component or material identified in Annex 403.2 of the Agreement, produced in the same plant, the producer of the good may—

(A) average its calculation—

(i) over the fiscal year of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month; or

(iii) over its fiscal year, if the good is sold as an aftermarket part;

(B) calculate the average referred to in subparagraph (A) separately for any or all goods sold to one or more motor vehicle producers; or

(C) with respect to any calculation under this paragraph, make a separate calculation for goods that are exported to the territory of one or more NAFTA countries.

(5) PHASE-IN OF REGIONAL VALUE-CONTENT REQUIREMENT.—Notwithstanding Annex 401 of the Agreement, and except as provided in paragraph (6), the regional value-content requirement shall be—

(A) for a producer's fiscal year beginning on the day closest to January 1, 1998, and thereafter, 56 percent calculated under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002, and thereafter, 62.5 percent calculated under the net cost method, for—

(i) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31; and

(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40,

that is for use in a motor vehicle identified in clause (i); and

(B) for a producer's fiscal year beginning on the day closest to January 1, 1998, and thereafter, 55 percent calculated under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002, and thereafter, 60 percent calculated under the net cost method, for—

(i) a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00;

(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40 that is for use in a motor vehicle identified in clause (i); and

(iii) except for a good identified in subparagraph (A)(ii) or a good provided for in subheadings 8482.10 through 8482.80, or subheading 8483.20 or 8483.30, a good identified in Annex 403.1

of the Agreement that is subject to a regional value-content requirement and is for use in a motor vehicle identified in subparagraph (A)(i) or (B)(i).

(6) NEW AND REFITTED PLANTS.—The regional value-content requirement for a motor vehicle identified in paragraph (1) or (2) shall be—

(A) 50 percent for 5 years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if—

(i) it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries;

(ii) the plant consists of a new building in which the motor vehicle is assembled; and

(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or

(B) 50 percent for 2 years after the date on which the first motor vehicle prototype is

produced at a plant following a refit, if it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, different from that assembled by the motor vehicle assembler in the plant before the refit.

(7) ELECTION FOR CERTAIN VEHICLES FROM CANADA.—In the case of goods provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, exported from Canada directly to the United States, and entered on or after January 1, 1989, and before the date of entry into force of the Agreement between the United States and Canada, an importer may elect to use the rules of origin set out in this section in lieu of the rules of origin contained in section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) and may elect to use the method for calculating the value of nonoriginating materials established in article 403(2) of the Agreement in lieu of the method established in article 403(1) of the Agreement for purposes of determining eligibility for preferential duty treatment under the United States-Canada Free-Trade Agreement. Any election under this paragraph

shall be made in writing to the Customs Service not later than the date that is 180 days after the date of entry into force of the Agreement between the United States and Canada. Any such election may be made only if the liquidation of such entry has not become final. For purposes of averaging the calculation of regional value-content for the goods covered by such entry, where the producer's 1989–1990 fiscal year began after January 1, 1989, the producer may include the period between January 1, 1989, and the beginning of its first fiscal year after January 1, 1989, as part of fiscal year 1989–1990.

(d) ACCUMULATION.—

(1) DETERMINATION OF ORIGINATING GOOD.—For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the NAFTA countries by one or more producers shall, at the choice of the exporter or producer of the good, be considered to have been performed in the territory of any of the NAFTA countries by that exporter or producer, if—

(A) all nonoriginating materials used in the production of the good undergo an applicable tariff classification change set out in Annex 401 of the Agreement;

(B) the good satisfies any applicable regional value-content requirement; and

(C) the good satisfies all other applicable requirements of this section.

The requirements of subparagraphs (A) and (B) must be satisfied entirely in the territory of one or more of the NAFTA countries.

(2) TREATMENT AS SINGLE PRODUCER.—For purposes of subsection (b)(10), the production of a producer that chooses to accumulate its production with that of other producers under paragraph (1) shall be treated as the production of a single producer.

(e) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraphs (3), (4), (5), and (6), a good shall be considered to be an originating good if—

(A) the value of all nonoriginating materials used in the production of the good that do not undergo an applicable change in tariff classification (set out in Annex 401 of the Agreement) is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis, or

(B) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such nonoriginating materials is not more than 7 percent of the total cost of the good,

provided that the good satisfies all other applicable requirements of this section and, if the good is subject to a regional value-content requirement, the value of such nonoriginating materials is taken into account in calculating the regional value-content of the good.

(2) GOODS NOT SUBJECT TO REGIONAL VALUE-CONTENT REQUIREMENT.—A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if—

(A)(i) the value of all nonoriginating materials used in the production of the good is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis; or

(ii) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all nonoriginating materials is not more than 7 percent of the total cost of the good; and

(B) the good satisfies all other applicable requirements of this section.

(3) DAIRY PRODUCTS, ETC.—Paragraph (1) does not apply to—

(A) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of a good provided for in chapter 4 of the HTS;

(B) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of—

(i) preparations for infants containing over 10 percent by weight of milk solids provided for in subheading 1901.10.00;

(ii) mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20.00;

(iii) a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80;

(iv) a good provided for in heading 2105 or subheading 2106.90.05, or preparations containing over 10 percent by weight of milk solids provided for in subheading 2106.90.15, 2106.90.40, 2106.90.50, or 2106.90.65;

(v) a good provided for in subheading 2202.90.10 or 2202.90.20; or

(vi) animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90.30;

(C) a nonoriginating material provided for in heading 0805 or subheadings 2009.11 through 2009.30 that is used in the production of—

(i) a good provided for in subheadings 2009.11 through 2009.30, or subheading 2106.90.16, or concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or

(ii) a good provided for in subheading 2202.90.30 or 2202.90.35, or fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, provided for in subheading 2202.90.36;

(D) a nonoriginating material provided for in chapter 9 of the HTS that is used in the production of instant coffee, not flavored, provided for in subheading 2101.10.20;

(E) a nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in headings 1501 through 1508, or heading 1512, 1514, or 1515;

(F) a nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in headings 1701 through 1703;

(G) a nonoriginating material provided for in chapter 17 of the HTS or heading 1805 that is used in the production of a good provided for in subheading 1806.10;

(H) a nonoriginating material provided for in headings 2203 through 2208 that is used in

the production of a good provided for in headings 2207 through 2208;

(I) a nonoriginating material used in the production of—

(i) a good provided for in subheading 7321.11.30;

(ii) a good provided for in subheading 8415.10, subheadings 8415.81 through 8415.83, subheadings 8418.10 through 8418.21, subheadings 8418.29 through 8418.40, subheading 8421.12 or 8422.11, subheadings 8450.11 through 8450.20, or subheadings 8451.21 through 8451.29;

(iii) trash compactors provided for in subheading 8479.89.60; or

(iv) a good provided for in subheading 8516.60.40; and

(J) a printed circuit assembly that is a nonoriginating material used in the production of a good where the applicable change in tariff classification for the good, as set out in Annex 401 of the Agreement, places restrictions on the use of such nonoriginating material.

(4) CERTAIN FRUIT JUICES.—Paragraph (1) does not apply to a nonoriginating single juice ingre-

dient provided for in heading 2009 that is used in the production of—

(A) a good provided for in subheading 2009.90, or concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or

(B) mixtures of fruit or vegetable juices, fortified with minerals or vitamins, provided for in subheading 2202.90.39.

(5) GOODS PROVIDED FOR IN CHAPTERS 1 THROUGH 27 OF THE HTS.—Paragraph (1) does not apply to a nonoriginating material used in the production of a good provided for in chapters 1 through 27 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(6) GOODS PROVIDED FOR IN CHAPTERS 50 THROUGH 63 OF THE HTS.—A good provided for in chapters 50 through 63 of the HTS, that does not originate because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set

out in Annex 401 of the Agreement, shall be considered to be a good that originates if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(f) FUNGIBLE GOODS AND MATERIALS.—For purposes of determining whether a good is an originating good—

(1) if originating and nonoriginating fungible materials are used in the production of the good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in regulations implementing this section; and

(2) if originating and nonoriginating fungible goods are commingled and exported in the same form, the determination may be made on the basis of any of the inventory management methods set out in regulations implementing this section.

(g) ACCESSORIES, SPARE PARTS, OR TOOLS.—

(1) IN GENERAL.—Except as provided in paragraph (2), accessories, spare parts, or tools delivered

with the good that form part of the good's standard accessories, spare parts, or tools shall—

(A) be considered as originating goods if the good is an originating good, and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement.

(2) CONDITIONS.—Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are not invoiced separately from the good;

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) in any case in which the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools are taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(h) INDIRECT MATERIALS.—An indirect material shall be considered to be an originating material without regard to where it is produced.

(i) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement. If the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers in which a good is packed for shipment shall be disregarded—

(1) in determining whether the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement; and

(2) in determining whether the good satisfies a regional value-content requirement.

(k) TRANSSHIPMENT.—A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of subsection (a) if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a NAFTA country.

(l) NONQUALIFYING OPERATIONS.—A good shall not be considered to be an originating good merely by reason of—

(1) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(2) any production or pricing practice with respect to which it may be demonstrated, by a preponderance of evidence, that the object was to circumvent this section.

(m) INTERPRETATION AND APPLICATION.—For purposes of this section:

(1) The basis for any tariff classification is the HTS.

(2) Except as otherwise expressly provided, whenever in this section there is a reference to a

heading or subheading such reference shall be a reference to a heading or subheading of the HTS.

(3) In applying subsection (a)(4), the determination of whether a heading or subheading under the HTS provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, the rules of interpretation, or notes of the HTS.

(4) In applying the Customs Valuation Code—

(A) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;

(B) the provisions of this section shall take precedence over the Customs Valuation Code to the extent of any difference; and

(C) the definitions in subsection (o) shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference.

(5) All costs referred to in this section shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable

in the territory of the NAFTA country in which the good is produced.

(n) ORIGIN OF AUTOMATIC DATA PROCESSING GOODS.—Notwithstanding any other provision of this section, when the NAFTA countries apply the most-favored-nation rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.

(o) SPECIAL RULE FOR CERTAIN AGRICULTURAL PRODUCTS.—Notwithstanding any other provision of this section, for purposes of applying a rate of duty to a good provided for in—

(1) heading 1202 that is exported from the territory of Mexico, if the good is not wholly obtained in the territory of Mexico,

(2) subheading 2008.11 that is exported from the territory of Mexico, if any material provided for in heading 1202 used in the production of that good is not wholly obtained in the territory of Mexico, or

(3) subheading 1806.10.42 or 2106.90.12 that is exported from the territory of Mexico, if any ma-

terial provided for in subheading 1701.99 used in the production of that good is not a qualifying good, such good shall be treated as a nonoriginating good and, for purposes of this subsection, the terms ''qualifying good'' and ''wholly obtained in the territory of'' have the meaning given such terms in paragraph 26 of section A of Annex 703.2 of the Agreement.

(p) DEFINITIONS.—For purposes of this section—

(1) CLASS OF MOTOR VEHICLES.—The term ''class of motor vehicles'' means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles designed for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00.

(B) Motor vehicles provided for in subheading 8701.10, or subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in subheadings 8703.21 through 8703.90.

(2) CUSTOMS VALUATION CODE.—The term ''Customs Valuation Code'' means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes.

(3) F.O.B.—The term ''F.O.B.'' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(4) FUNGIBLE GOODS AND FUNGIBLE MATERIALS.—The terms ''fungible goods'' and ''fungible materials'' mean goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

(5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information, and preparation of financial statements. These standards may be broad guide-

lines of general application as well as detailed standards, practices, or procedures.

(6) GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF ONE OR MORE OF THE NAFTA COUNTRIES.—The term ''goods wholly obtained or produced entirely in the territory of one or more of the NAFTA countries'' means—

(A) mineral goods extracted in the territory of one or more of the NAFTA countries;

(B) vegetable goods harvested in the territory of one or more of the NAFTA countries;

(C) live animals born and raised in the territory of one or more of the NAFTA countries;

(D) goods obtained from hunting, trapping, or fishing in the territory of one or more of the NAFTA countries;

(E) goods (such as fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a NAFTA country and flying its flag;

(F) goods produced on board factory ships from the goods referred to in subparagraph (E), if such factory ships are registered or recorded with that NAFTA country and fly its flag;

(G) goods taken by a NAFTA country or a person of a NAFTA country from the seabed or beneath the seabed outside territorial waters, provided that a NAFTA country has rights to exploit such seabed;

(H) goods taken from outer space, if the goods are obtained by a NAFTA country or a person of a NAFTA country and not processed in a country other than a NAFTA country;

(I) waste and scrap derived from—

(i) production in the territory of one or more of the NAFTA countries; or

(ii) used goods collected in the territory of one or more of the NAFTA countries, if such goods are fit only for the recovery of raw materials; and

(J) goods produced in the territory of one or more of the NAFTA countries exclusively from goods referred to in subparagraphs (A) through (I), or from their derivatives, at any stage of production.

(7) IDENTICAL OR SIMILAR GOODS.—The term ''identical or similar goods'' means ''identical goods'' and ''similar goods'', respectively, as defined in the Customs Valuation Code.

(8) INDIRECT MATERIAL.—

(A) The term ''indirect material'' means a good—

(i) used in the production, testing, or inspection of a good but not physically incorporated into the good, or

(ii) used in the maintenance of buildings or the operation of equipment associated with the production of a good,

in the territory of one or more of the NAFTA countries.

(B) When used for a purpose described in subparagraph (A), the following materials are among those considered to be indirect materials:

(i) Fuel and energy.

(ii) Tools, dies, and molds.

(iii) Spare parts and materials used in the maintenance of equipment and buildings.

(iv) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings.

(v) Gloves, glasses, footwear, clothing, safety equipment, and supplies.

(vi) Equipment, devices, and supplies used for testing or inspecting the goods.

(vii) Catalysts and solvents.

(viii) Any other goods that are not incorporated into the good, if the use of such goods in the production of the good can reasonably be demonstrated to be a part of that production.

(9) INTERMEDIATE MATERIAL.—The term ''intermediate material'' means a material that is self-produced, used in the production of a good, and designated pursuant to subsection (b)(10).

(10) MARQUE.—The term ''marque'' means the trade name used by a separate marketing division of a motor vehicle assembler.

(11) MATERIAL.—The term ''material'' means a good that is used in the production of another good and includes a part or an ingredient.

(12) MODEL LINE.—The term ''model line'' means a group of motor vehicles having the same platform or model name.

(13) MOTOR VEHICLE ASSEMBLER.—The term ''motor vehicle assembler'' means a producer of

motor vehicles and any related persons or joint ventures in which the producer participates.

(14) NAFTA COUNTRY.—The term ''NAFTA country'' means the United States, Canada or Mexico for such time as the Agreement is in force with respect to Canada or Mexico, and the United States applies the Agreement to Canada or Mexico.

(15) NEW BUILDING.—The term ''new building'' means a new construction, including at least the pouring or construction of new foundation and floor, the erection of a new structure and roof, and installation of new plumbing, electrical, and other utilities to house a complete vehicle assembly process.

(16) NET COST.—The term ''net cost'' means total cost less sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost.

(17) NET COST OF A GOOD.—The term ''net cost of a good'' means the net cost that can be reasonably allocated to a good using one of the methods set out in subsection (b)(8).

(18) NONALLOWABLE INTEREST COSTS.—The term ''nonallowable interest costs'' means interest

costs incurred by a producer as a result of an interest rate that exceeds the applicable federal government interest rate for comparable maturities by more than 700 basis points, determined pursuant to regulations implementing this section.

(19) NONORIGINATING GOOD; NONORIGINATING MATERIAL.—The term ''nonoriginating good'' or ''nonoriginating material'' means a good or material that does not qualify as an originating good or material under the rules of origin set out in this section.

(20) ORIGINATING.—The term ''originating'' means qualifying under the rules of origin set out in this section.

(21) PRODUCER.—The term ''producer'' means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles a good.

(22) PRODUCTION.—The term ''production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling a good.

(23) REASONABLY ALLOCATE.—The term ''reasonably allocate'' means to apportion in a manner appropriate to the circumstances.

(24) REFIT.—The term ''refit'' means a plant closure, for purposes of plant conversion or retooling, that lasts at least 3 months.

(25) RELATED PERSONS.—The term ''related persons'' means persons specified in any of the following subparagraphs:

(A) Persons who are officers or directors of one another's businesses.

(B) Persons who are legally recognized partners in business.

(C) Persons who are employer and employee.

(D) Persons one of whom owns, controls, or holds 25 percent or more of the outstanding voting stock or shares of the other.

(E) Persons if 25 percent or more of the outstanding voting stock or shares of each of them is directly or indirectly owned, controlled, or held by a third person.

(F) Persons one of whom is directly or indirectly controlled by the other.

(G) Persons who are directly or indirectly controlled by a third person.

(H) Persons who are members of the same family.

For purposes of this paragraph, the term ''members of the same family'' means natural or adoptive children, brothers, sisters, parents, grandparents, or spouses.

(26) ROYALTIES.—The term ''royalties'' means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula, or process. It does not include payments under technical assistance or similar agreements that can be related to specific services such as—

(A) personnel training, without regard to where performed; and

(B) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services.

(27) SALES PROMOTION, MARKETING, AND AFTER-SALES SERVICE COSTS.—The term ''sales promotion, marketing, and after-sales service costs'' means the costs related to sales promotion, marketing, and after-sales service for the following:

(A) Sales and marketing promotion, media advertising, advertising and market research, promotional and demonstration materials, exhibits, sales conferences, trade shows, conventions, banners, marketing displays, free samples, sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information), establishment and protection of logos and trademarks, sponsorships, wholesale and retail restocking charges, and entertainment.

(B) Sales and marketing incentives, consumer, retailer, or wholesaler rebates, and merchandise incentives.

(C) Salaries and wages, sales commissions, bonuses, benefits (such as medical, insurance, and pension), traveling and living expenses, and membership and professional fees for sales promotion, marketing, and after-sales service personnel.

(D) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified sepa-

rately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(E) Product liability insurance.

(F) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(G) Telephone, mail, and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(H) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers.

(I) Property insurance, taxes, utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(J) Payments by the producer to other persons for warranty repairs.

(28) SELF-PRODUCED MATERIAL.—The term ''self-produced material'' means a material that is produced by the producer of a good and used in the production of that good.

(29) SHIPPING AND PACKING COSTS.—The term ''shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, but does not include the costs of preparing and packaging the good for retail sale.

(30) SIZE CATEGORY.—The term ''size category'' means with respect to a motor vehicle identified in subsection (c)(1)(A)—

(A) 85 cubic feet or less of passenger and luggage interior volume;

(B) more than 85 cubic feet, but less than 100 cubic feet, of passenger and luggage interior volume;

(C) at least 100 cubic feet, but not more than 110 cubic feet, of passenger and luggage interior volume;

(D) more than 110 cubic feet, but less than 120 cubic feet, of passenger and luggage interior volume; and

(E) 120 cubic feet or more of passenger and luggage interior volume.

(31) TERRITORY.—The term ''territory'' means a territory described in Annex 201.1 of the Agreement.

(32) TOTAL COST.—The term ''total cost'' means all product costs, period costs, and other costs incurred in the territory of one or more of the NAFTA countries.

(33) TRANSACTION VALUE.—Except as provided in subsection (c)(1) or (c)(2)(A), the term ''transaction value'' means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3, and 4 of Article 8 of the Customs Valuation Code and determined without regard to whether the good or material is sold for export.

(34) UNDERBODY.—The term ''underbody'' means the floor pan of a motor vehicle.

(35) USED.—The term ''used'' means used or consumed in the production of goods.

(q) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as a part of the HTS—

(A) the provisions set out in Appendix 6.A of Annex 300–B, Annex 401, Annex 403.1, Annex 403.2, and Annex 403.3, of the Agreement, and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—Subject to the consultation and layover requirements of section 103, the President may proclaim—

(A) modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than the provisions of paragraph A of Appendix 6 of Annex 300–B and section XI of part B of Annex 401 of the Agreement; and

(B) a modified version of the definition of any term set out in subsection (p) (and such modified version of the definition shall supersede the version in subsection (p)), but only if the modified version reflects solely those modifications to the same term in article 415 of the

Agreement that are agreed to by the NAFTA countries before the 1st anniversary of the date of the enactment of this Act.

(3) SPECIAL RULES FOR TEXTILES.—Notwithstanding the provisions of paragraph (2)(A), and subject to the consultation and layover requirements of section 103, the President may proclaim—

(A) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with one or more of the NAFTA countries pursuant to paragraph 2 of section 7 of Annex 300–B of the Agreement, and

(B) before the 1st anniversary of the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of Appendix 6.A of Annex 300–B and section XI of part B of Annex 401 of the Agreement.

**SEC. 203. DRAWBACK.**

(a) DEFINITION OF A GOOD SUBJECT TO NAFTA DRAWBACK.—For purposes of this Act and the amendments made by subsection (b), the term ''good subject to

NAFTA drawback'' means any imported good other than the following:

(1) A good entered under bond for transportation and exportation to a NAFTA country.

(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph—

(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good, and

(B) except for a good referred to in paragraph 12 of section A of Annex 703.2 of the Agreement that is exported to Mexico, if a good described in the first sentence of this paragraph is commingled with fungible goods and exported in the same condition, the origin of the good may be determined on the basis of the inventory methods provided for in the regulations implementing this title.

(3) A good—

(A) that is—

(i) deemed to be exported from the United States,

(ii) used as a material in the production of another good that is deemed to be exported to a NAFTA country, or

(iii) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is deemed to be exported to a NAFTA country, and

(B) that is delivered—

(i) to a duty-free shop,

(ii) for ship's stores or supplies for ships or aircraft, or

(iii) for use in a project undertaken jointly by the United States and a NAFTA country and destined to become the property of the United States.

(4) A good exported to a NAFTA country for which a refund of customs duties is granted by reason of—

(A) the failure of the good to conform to sample or specification, or

(B) the shipment of the good without the consent of the consignee.

(5) A good that qualifies under the rules of origin set out in section 202 that is—

(A) exported to a NAFTA country,

(B) used as a material in the production of another good that is exported to a NAFTA country, or

(C) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to a NAFTA country.

(6) A good provided for in subheading 1701.11.02 of the HTS that is—

(A) used as a material, or

(B) substituted for by a good of the same kind and quality that is used as a material,

in the production of a good provided for in existing Canadian tariff item 1701.99.00 or existing Mexican tariff item 1701.99.01 or 1701.99.99 (relating to refined sugar).

(7) A citrus product that is exported to Canada.

(8) A good used as a material, or substituted for by a good of the same kind and quality that is used as a material, in the production of—

(A) apparel, or

(B) a good provided for in subheading 6307.90.99 (insofar as it relates to furniture

moving pads), 5811.00.20, or 5811.00.30 of the HTS,

that is exported to Canada and that is subject to Canada's most-favored-nation rate of duty upon importation into Canada.

Where in paragraph (6) a good referred to by an item is described in parentheses following the item, the description is provided for purposes of reference only.

(b) CONSEQUENTIAL AMENDMENTS WITH DELAYED EFFECT.—

(1) BONDED MANUFACTURING WAREHOUSES.—The last paragraph of section 311 of the Tariff Act of 1930 (19 U.S.C. 1311) is amended to read as follows:

''No article manufactured in a bonded warehouse from materials that are goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to a NAFTA country, as defined in section 2(4) of that Act, without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid before the 61st day after the date of exportation, except that upon the presentation, before such 61st day, of satisfactory evi-

dence of the amount of any customs duties paid to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

''(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or

''(2) the total amount of customs duties paid on the article to the NAFTA country.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada during the period such Agreement is in operation without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.''.

(2) BONDED SMELTING AND REFINING WAREHOUSES.—Section 312 of the Tariff Act of 1930 (19 U.S.C. 1312) is amended—

(A) in paragraphs (1) and (4) of subsection (b), by striking out the parenthetical matter and the final ‘‘, or’’ and by adding at the end the following:

‘‘; except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

‘‘(A) the total amount of customs duties owed on the materials on importation into the United States, or

‘‘(B) the total amount of customs duties paid to the NAFTA country on the product, or’’;

(B) by adding at the end of subsection (b) the following new flush sentence.

''If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no charges against such bond may be canceled in whole or part upon an exportation to Canada under paragraph (1) or (4) during the period such Agreement is in operation except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.''; and

(C) in subsection (d) by striking out the parenthetical matter and by inserting before the period the following:

''; except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited

(subject to section 508(b)(2)(B)) in an amount not to exceed the lesser of—

''(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or

''(2) the total amount of customs duties paid to the NAFTA country on the product.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free Trade Agreement Implementation Act of 1988''.

(3) DRAWBACK.—Subsections (n) and (o) of section 313 of the Tariff Act of 1930 (19 U.S.C. 1313(n) and (o)) are amended to read as follows:

''(n)(1) For purposes of this subsection and subsection (o)—

''(A) the term 'NAFTA Act' means the North American Free Trade Agreement Implementation Act;

''(B) the terms 'NAFTA country' and 'good subject to NAFTA drawback' have the same respective meanings that are given such terms in sections 2(4) and 203(a) of the NAFTA Act; and

''(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (o) is subject to section 508(b)(2)(B).

''(2) For purposes of subsections (a), (b), (f), (h), (p), and (q), if an article that is exported to a NAFTA country is a good subject to NAFTA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of—

''(A) the total amount of customs duties paid or owed on the good on importation into the United States, or

''(B) the total amount of customs duties paid on the good to the NAFTA country.

''(3) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q), the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section

204(a) of the United States-Canada Free-Trade Implementation Act of 1988 does not constitute an exportation.

''(o)(1) For purposes of subsection (g), if—

''(A) a vessel is built for the account and ownership of a resident of a NAFTA country or the government of a NAFTA country, and

''(B) imported materials that are used in the construction and equipment of the vessel are goods subject to NAFTA drawback,

the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the NAFTA country.

''(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the

United States-Canada Free-Trade Implementation Act of 1988.''.

(4) MANIPULATION IN WAREHOUSE.—Section 562 of the Tariff Act of 1930 (19 U.S.C. 1562) is amended—

(A) in the second sentence by striking out ''without payment of duties—'' and inserting a dash;

(B) by striking out paragraphs (1), (2), and (3) and inserting the following:

''(1) without payment of duties for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the merchandise is of a kind described in any of paragraphs (1) through (8) of section 203(a) of that Act;

''(2) for exportation to a NAFTA country if the merchandise consists of goods subject to NAFTA drawback, as defined in section 203(a) of that Act, except that—

''(A) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions

to or deductions from the final appraised value as may be necessary by reason of change in condition, and

''(B) duty shall be paid on the merchandise before the 61st day after the date of exportation, but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the merchandise, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

''(i) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or

''(ii) the total amount of customs duties paid on the merchandise to the NAFTA country;

''(3) without payment of duties for exportation to any foreign country other than to a NAFTA country or to Canada when exports to that country are subject to paragraph (4);

''(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the

United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise that—

''(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

''(B) is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988; and

''(5) without payment of duties for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.''; and

(B) in the third sentence by striking out ''paragraph (1) of the preceding sentence'' and inserting ''paragraph (4) of the preceding sentence''.

(5) FOREIGN TRADE ZONES.—Section 3(a) of the Act of June 18, 1934 (commonly known as the ''Foreign Trade Zones Act''; 19 U.S.C. 81c(a)) is amended—

(A) in the last proviso—

(i) by inserting after ''That'' the following: '', if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates,''; and

(ii) by striking out ''on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988,'' and inserting ''during the period such Agreement is in operation''; and

(B) by inserting before such last proviso the following new proviso: ''*: Provided, further,* That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 2(4) of that Act, without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an as-

sessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930) in an amount that does not exceed the lesser of (1) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country:''.

(c) CONSEQUENTIAL AMENDMENT WITH IMMEDIATE EFFECT.—Section 313(j) of the Tariff Act of 1930 (19 U.S.C. 1313(j)) is amended—

(1) by striking out ''If'' in paragraph (2) and inserting ''Subject to paragraph (4), if''; and

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

"(4) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of section 203(a) of that Act, shall not constitute an exportation for purposes of paragraph (2).".

(d) ELIMINATION OF DRAWBACK FOR SECTION 22 FEES.—Notwithstanding any other provision of law, the Secretary of the Treasury may not, on condition of export, refund or reduce a fee applied pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) with respect to goods included under subsection (a) that are exported to—

(1) Canada after December 31, 1995, for so long as it is a NAFTA country; or

(2) Mexico after December 31, 2000, for so long as it is a NAFTA country.

(e) INAPPLICABILITY TO COUNTERVAILING AND ANTIDUMPING DUTIES.—Nothing in this section or the amendments made by it shall be considered to authorize

the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

**SEC. 204. CUSTOMS USER FEES.**

Paragraph (10) of section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(10)) is amended to read as follows:

''(10)(A) The fee charged under subsection (a)(9) or (10) with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement) when the United States-Canada Free-Trade Agreement is in force shall be in accordance with section 403 of that Agreement.

''(B) For goods qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, the fee under subsection (a)(9) or (10)—

''(i) may not be charged with respect to goods that qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement, for such time as Canada is a NAFTA country, as defined in section 2(4) of such Implementation Act; and

''(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as

goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country.

Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.''.

**SEC. 205. ENFORCEMENT.**

(a) RECORDKEEPING REQUIREMENTS.—Section 508 of the Tariff Act of 1930 (19 U.S.C. 1508) is amended as follows:

(1) Subsection (b) is amended to read as follows:

''(b) EXPORTATIONS TO FREE TRADE COUNTRIES.—

''(1) DEFINITIONS.—As used in this subsection—

''(A) The term 'associated records' means, in regard to an exported good under paragraph (2), records associated with—

''(i) the purchase of, cost of, value of, and payment for, the good;

''(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and

''(iii) the production of the good.

For purposes of this subparagraph, the terms 'indirect material,' 'material,' 'preferential tariff treatment,' 'used,' and 'value' have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.

''(B) The term 'NAFTA Certificate of Origin' means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

''(2) EXPORTS TO NAFTA COUNTRIES.—

''(A) IN GENERAL.—Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the Certificate or copies thereof) and the associated records.

''(B) CLAIMS FOR CERTAIN WAIVERS, REDUCTIONS, OR REFUNDS OF DUTIES OR FOR CREDIT AGAINST BONDS.—

"(i) IN GENERAL.—Any person that claims with respect to an article—

"(I) a waiver or reduction of duty under the last paragraph of section 311, section 312(b)(1) or (4), section 562(2), or the last proviso to section 3(a) of the Foreign Trade Zones Act;

"(II) a credit against a bond under section 312(d); or

"(III) a refund, waiver, or reduction of duty under section 313(n)(2) or (o)(1);

must disclose to the Customs Service the information described in clause (ii).

"(ii) INFORMATION REQUIRED.—Within 30 days after making a claim described in clause (i) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either—

''(I) prepares a NAFTA Certificate of Origin for the article; or

''(II) learns of the existence of such a Certificate for the article;

that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.

''(iii) ACTION ON CLAIM.—If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (i) is made, the Customs Service may make such adjustments regarding the previous customs treatment of the article as may be warranted.

''(3) EXPORTS UNDER THE CANADIAN AGREEMENT.—Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall make, keep, and render for examination and inspection such records (including certifications of

origin or copies thereof) which pertain to the exportations.''.

(2) Subsection (c) is amended to read as follows:

''(c) PERIOD OF TIME.—The records required by subsections (a) and (b) shall be kept for such periods of time as the Secretary shall prescribe; except that—

''(1) no period of time for the retention of the records required under subsection (a) or (b)(3) may exceed 5 years from the date of entry or exportation, as appropriate;

''(2) the period of time for the retention of the records required under subsection (b)(2) shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and

''(3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.''.

(3) Subsection (e) is amended to read as follows:

''(e) SUBSECTION (b) PENALTIES.—

''(1) RELATING TO NAFTA EXPORTS.—Any person who fails to retain records required by paragraph (2) of subsection (b) or the regulations issued to implement that paragraph shall be liable for—

"(A) a civil penalty not to exceed $10,000; or

"(B) the general recordkeeping penalty that applies under the customs laws;

whichever penalty is higher.

"(2) RELATING TO CANADIAN AGREEMENT EXPORTS.—Any person who fails to retain the records required by paragraph (3) of subsection (b) or the regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed $10,000.".

(b) CONFORMING AMENDMENT.—Section 509(a)(2)(A)(ii) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(2)(A)(ii)) is amended to read as follows:

"(ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) or to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada,".

(c) DISCLOSURE OF INCORRECT INFORMATION.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended—

(1) in subsection (c)—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph:

''(5) PRIOR DISCLOSURE REGARDING NAFTA CLAIMS.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim for preferential tariff treatment under section 202 of the North American Free Trade Agreement Implementation Act if the importer—

''(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 508(b)(1)) on which the claim was based contains incorrect information; and

''(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.''; and

(2) by adding at the end the following new subsection:

''(f) FALSE CERTIFICATIONS REGARDING EXPORTS TO NAFTA COUNTRIES.—

''(1) IN GENERAL.—Subject to paragraph (3), it is unlawful for any person to certify falsely, by

fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 508(b)(1)) that a good to be exported to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) qualifies under the rules of origin set out in section 202 of that Act.

''(2) APPLICABLE PROVISIONS.—The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of paragraph (1), except that—

''(A) subsection (d) does not apply, and

''(B) subsection (c)(5) applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

''(3) EXCEPTION.—A person may not be considered to have violated paragraph (1) if—

''(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

''(B) the person voluntarily and promptly provides written notice of the change to all per-

sons to whom the person provided the Certificate of Origin.''.

**SEC. 206. RELIQUIDATION OF ENTRIES FOR NAFTA-ORIGIN GOODS.**

Section 520 of the Tariff Act of 1930 (19 U.S.C. 1520) is amended by adding at the end the following new subsection:

''(d) Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

''(1) a written declaration that the good qualified under those rules at the time of importation;

''(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1)); and

''(3) such other documentation relating to the importation of the goods as the Customs Service may require.''.

**SEC. 207. COUNTRY OF ORIGIN MARKING OF NAFTA GOODS.**

(a) AMENDMENTS TO TARIFF ACT OF 1930.—Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) is amended—

(1) in subsection (c)(1), by striking ''or engraving'' and inserting ''engraving, or continuous paint stenciling'';

(2) in subsection (c)(2)—

(A) by striking ''four'' and inserting ''five''; and

(B) by striking ''such as paint stenciling'';

(3) in subsection (e), by striking ''or engraving'' and inserting ''engraving, or an equally permanent method of marking'';

(4) by redesignating subsection (h) as subsection (i); and

(5) by inserting after subsection (g) the following new subsection:

''(h) TREATMENT OF GOODS OF A NAFTA COUNTRY.—

''(1) APPLICATION OF SECTION.—In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) under the regulations issued by the Sec-

retary to implement Annex 311 of the North American Free Trade Agreement—

"(A) the exemption under subsection (a)(3)(H) shall be applied by substituting 'reasonably know' for 'necessarily know';

"(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) if the good—

"(i) is an original work of art, or

"(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and

"(C) subsection (b) does not apply to the usual container of any good described in subsection (a)(3)(E) or (I) or subparagraph (B)(i) or (ii) of this paragraph.

"(2) PETITION RIGHTS OF NAFTA EXPORTERS AND PRODUCERS REGARDING MARKING DETERMINATIONS.—

"(A) DEFINITIONS.—For purposes of this paragraph:

"(i) The term 'adverse marking decision' means a determination by the Customs Service which an exporter or pro-

ducer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

''(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person—

''(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

''(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

''(B) INTERVENTION OR PETITION REGARDING ADVERSE MARKING DECISIONS.—If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or

producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth—

''(i) a description of the merchandise; and

''(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.

''(C) EFFECT OF DETERMINATION REGARDING DECISION.—If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision—

''(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom

Bulletin shall be marked in conformity with the determination; or

''(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.

''(D) JUDICIAL REVIEW.—For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 516 regarding an issue arising under any of the preceding provisions of this section.''.

(b) COORDINATION WITH 1988 ACT REGARDING CERTAIN ARTICLES.—Articles that qualify as goods of a NAFTA country under regulations issued by the Secretary in accordance with Annex 311 of the Agreement are exempt from the marking requirements promulgated by the Secretary of the Treasury under section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418), but are subject to the requirements of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304).

**SEC. 208. PROTESTS AGAINST ADVERSE ORIGIN DETERMINATIONS.**

Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) is amended—

(1) in subsection (c)(1) by inserting ‘‘, or with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act,’’ after ‘‘with respect to any one category of merchandise’’ in the fourth sentence;

(2) in subsection (c)(2)—

(A) by striking out ‘‘or’’ at the end of subparagraph (D);

(B) by redesignating subparagraph (E) as subparagraph (F);

(C) by inserting after subparagraph (D) the following new subparagraph:

‘‘(E) with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or’’; and

(D) by striking ‘‘clauses (A) through (D)’’ in subparagraph (F) (as redesignated by subparagraph (B)), and inserting ‘‘clauses (A) through (E)’’; and

(3) by adding at the end the following new subsections:

''(e) ADVANCE NOTICE OF CERTAIN DETERMINATIONS.—Except as provided in subsection (f), an exporter or producer referred to in subsection (c)(2)(E) shall be provided notice in advance of an adverse determination of origin under section 202 of the North American Free Trade Agreement Implementation Act. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

''(f) DENIAL OF PREFERENTIAL TREATMENT.—If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act—

''(1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and

''(2) the advance notice requirement in subsection (e) shall not apply to that person;

until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 202.''.

**SEC. 209. EXCHANGE OF INFORMATION.**

Section 628 of the Tariff Act of 1930 (19 U.S.C. 1628) is amended by adding at the end the following new subsection:

''(c) The Secretary may authorize the Customs Service to exchange information with any government agency of a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the Secretary—

''(1) reasonably believes the exchange of information is necessary to implement chapter 3, 4, or 5 of the North American Free Trade Agreement, and

''(2) obtains assurances from such country that the information will be held in confidence and used only for governmental purposes.''.

**SEC. 210. PROHIBITION ON DRAWBACK FOR TELEVISION PICTURE TUBES.**

Notwithstanding any other provision of law, no customs duties may be refunded, waived, or reduced on color cathode-ray television picture tubes, including video mon-

itor cathode-ray tubes (provided for in subheading 8540.11.00 of the HTS), that are nonoriginating goods under section 202(p)(19) and are—

(A) exported to a NAFTA country;

(B) used as a material in the production of other goods that are exported to a NAFTA country; or

(C) substituted for by goods of the same kind and quality used as a material in the production of other goods that are exported to a NAFTA country.

**SEC. 211. MONITORING OF TELEVISION AND PICTURE TUBE IMPORTS.**

(a) MONITORING.—Beginning on the date the Agreement enters into force with respect to the United States, the United States Customs Service shall, for a period of 5 years, monitor imports into the United States of articles described in subheading 8528.10 of the HTS from NAFTA countries and shall take action to exercise all rights of the United States under chapter 5 of the Agreement with respect to such imports. The United States Customs Service shall take appropriate action under chapter 5 of the Agreement with respect to such imports, including verifications to ensure that the rules of origin under the Agreement are fully complied with and that the duty drawback obligations contained in article 303 and

Annex 303.8 of the Agreement are fully implemented and duties are correctly assessed.

(b) REPORT TO TRADE REPRESENTATIVE.—The United States Customs Service shall make the results of the monitoring and verification required by subsection (a) available to the President and the Trade Representative. If, based on such information, the President has reason to believe that articles described in subheading 8540.11 of the HTS, intended for ultimate consumption in the United States, are entering the territory of a NAFTA country inconsistent with the provisions of the Agreement, or have been undervalued in a manner that may raise concerns under United States trade laws, the President shall promptly take such action as may be appropriate under all relevant provisions of the Agreement, including article 317 and chapter 20, and under applicable United States trade statutes.

**SEC. 212. TITLE VI AMENDMENTS.**

Any amendment in this title to a law that is also amended under title VI shall be made after the title VI amendment is executed.

**SEC. 213. EFFECTIVE DATES.**

(a) PROVISIONS EFFECTIVE ON DATE OF ENACTMENT.—Section 212 and this section take effect on the date of the enactment of this Act.

(b) PROVISIONS EFFECTIVE WHEN AGREEMENT ENTERS INTO FORCE.—Section 201, section 202, section 203(a), (d), and (e), section 210 and section 211, the amendment made by section 203(c), and the amendments made by sections 204 through 209 take effect on the date the Agreement enters into force with respect to the United States.

(c) PROVISIONS WITH DELAYED EFFECTIVE DATES.—The amendments made by section 203(b) apply—

(1) with respect to exports from the United States to Canada—

(A) on January 1, 1996, if Canada is a NAFTA country on that date, and

(B) after such date for so long as Canada continues to be a NAFTA country; and

(2) with respect to exports from the United States to Mexico—

(A) on January 1, 2001, if Mexico is a NAFTA country on that date; and

(B) after such date for so long as Mexico continues to be a NAFTA country.

# TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

## Subtitle A—Safeguards

### PART 1—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

**SEC. 301. DEFINITIONS.**

As used in this part:

(1) CANADIAN ARTICLE.—The term ''Canadian article'' means an article that—

(A) is an originating good under chapter 4 of the Agreement; and

(B) qualifies under the Agreement to be marked as a good of Canada.

(2) MEXICAN ARTICLE.—The term ''Mexican article'' means an article that—

(A) is an originating good under chapter 4 of the Agreement; and

(B) qualifies under the Agreement to be marked as a good of Mexico.

**SEC. 302. COMMENCING OF ACTION FOR RELIEF.**

(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this part for the purpose of adjusting to the obligations of the United States under the Agree-

ment may be filed with the International Trade Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The International Trade Commission shall transmit a copy of any petition filed under this subsection to the Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974.

(3) CRITICAL CIRCUMSTANCES.—An allegation that critical circumstances exist must be included in the petition or made on or before the 90th day after the date on which the investigation is initiated under subsection (b).

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the International Trade Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in ab-

solute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of—

(1) serious injury; or

(2) except in the case of a Canadian article, a threat of serious injury;

to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) APPLICABLE PROVISIONS.—The provisions of—

(1) paragraphs (1)(B), (3) (except subparagraph (A)), and (4) of subsection (b);

(2) subsection (c); and

(3) subsection (d),

of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to—

(1) any Canadian article or Mexican article if import relief has been provided under this part with respect to that article; or

(2) any textile or apparel article set out in Appendix 1.1 of Annex 300–B of the Agreement.

**SEC. 303. INTERNATIONAL TRADE COMMISSION ACTION ON PETITION.**

(a) DETERMINATION.—By no later than 120 days after the date on which an investigation is initiated under section 302(b) with respect to a petition, the International Trade Commission shall—

(1) make the determination required under that section; and

(2) if the determination referred to in paragraph (1) is affirmative and an allegation regarding critical circumstances was made under section 302(a), make a determination regarding that allegation.

(b) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the International Trade Commission under subsection (a) with respect to imports of an article is affirmative, the International Trade Commission shall find, and recommend to the President in the report required under subsection (c), the amount of import relief that is necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission in the determination. The import relief recommended by the International Trade Commission under this subsection shall be limited to that described in section 304(c).

(c) REPORT TO PRESIDENT.—No later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the International Trade Commission shall submit to the President a report that shall include—

(1) a statement of the basis for the determination;

(2) dissenting and separate views; and

(3) any finding made under subsection (b) regarding import relief.

(d) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (c), the International Trade Commission shall promptly make public such report (with the exception of information which the International Trade Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(e) APPLICABLE PROVISIONS.—For purposes of this part, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

**SEC. 304. PROVISION OF RELIEF.**

(a) IN GENERAL.—No later than the date that is 30 days after the date on which the President receives the report of the International Trade Commission containing an affirmative determination of the International Trade Commission under section 303(a), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—The import relief (including provisional relief) that the President is authorized to provide under this part is as follows:

(1) In the case of imports of a Canadian article—

(A) the suspension of any further reduction provided for under Annex 401.2 of the United States-Canada Free-Trade Agreement in the duty imposed on such article;

(B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(ii) the column 1 general rate of duty imposed on like articles on December 31, 1988; or

(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed on the article for the corresponding season occurring immediately before January 1, 1989.

(2) In the case of imports of a Mexican article—

(A) the suspension of any further reduction provided for under the United States Schedule to Annex 302.2 of the Agreement in the duty imposed on such article;

(B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force; or

(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on the article for the corresponding season immediately occurring before the date on which the Agreement enters into force.

(d) PERIOD OF RELIEF.—The import relief that the President is authorized to provide under this section may not exceed 3 years, except that, if a Canadian article or Mexican article which is the subject of the action—

(1) is provided for in an item for which the transition period of tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years; and

(2) the President determines that the affected industry has undertaken adjustment and requires an extension of the period of the import relief;

the President, after obtaining the advice of the International Trade Commission, may extend the period of the import relief for not more than 1 year, if the duty applied during the initial period of the relief is substantially reduced at the beginning of the extension period.

(e) RATE ON MEXICAN ARTICLES AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this part is terminated with respect to a Mexican article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which termination occurs shall be the rate that, according to the United States Schedule to Annex 302.2 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the import relief action under section 302; and

(2) the tariff treatment for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the rate of duty conforming to the applicable rate set out in the United States Schedule to Annex 302.2; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule to Annex 302.2 for the elimination of the tariff.

**SEC. 305. TERMINATION OF RELIEF AUTHORITY.**

(a) GENERAL RULE.—Except as provided in subsection (b), no import relief may be provided under this part—

(1) in the case of a Canadian article, after December 31, 1998; or

(2) in the case of a Mexican article, after the date that is 10 years after the date on which the Agreement enters into force;

unless the article against which the action is taken is an item for which the transition period for tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years, in which case the period during which relief may be granted shall be the period of staged tariff elimination for that article.

(b) EXCEPTION.—Import relief may be provided under this part in the case of a Canadian article or Mexi-

can article after the date on which such relief would, but for this subsection, terminate under subsection (a), but only if the Government of Canada or Mexico, as the case may be, consents to such provision.

**SEC. 306. COMPENSATION AUTHORITY.**

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 304 shall be treated as action taken under chapter I of title II of such Act.

**SEC. 307. SUBMISSION OF PETITIONS.**

A petition for import relief may be submitted to the International Trade Commission under—

(1) this part;

(2) chapter 1 of title II of the Trade Act of 1974; or

(3) under both this part and such chapter 1 at the same time, in which case the International Trade Commission shall consider such petitions jointly.

**SEC. 308. SPECIAL TARIFF PROVISIONS FOR CANADIAN FRESH FRUITS AND VEGETABLES.**

(a) IN GENERAL.—Section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended—

(1) in paragraph (1), by striking ''promptly'' in the flush sentence at the end thereof and inserting ''immediately'',

(2) by redesignating paragraphs (2) through (9) as paragraphs (3) through (10), respectively,

(3) by inserting after paragraph (1) the following new paragraph:

''(2) No later than 6 days after publication in the Federal Register of the notice described in paragraph (1), the Secretary shall decide whether to recommend the imposition of a temporary duty to the President, and if the Secretary decides to make such a recommendation, the recommendation shall be forwarded immediately to the President.'',

(4) in paragraph (5), as redesignated by paragraph (2), by striking ''paragraph (3)'' and inserting ''paragraph (4)'', and

(5) by amending paragraph (9), as redesignated by paragraph (2), to read as follows:

''(9) For purposes of assisting the Secretary in carrying out this subsection—

''(A) the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importa-

tion of Canadian fresh fruits and vegetables, and

''(B) importers shall report such information relating to Canadian fresh fruits and vegetables to the Commissioner of Customs at such time and in such manner as the Commissioner requires.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of the enactment of this Act.

**SEC. 309. PRICE-BASED SNAPBACK FOR FROZEN CONCENTRATED ORANGE JUICE.**

(a) TRIGGER PRICE DETERMINATION.—

(1) IN GENERAL.—The Secretary shall determine—

(A) each period of 5 consecutive business days in which the daily price for frozen concentrated orange juice is less than the trigger price; and

(B) for each period determined under subparagraph (A), the first period occurring thereafter of 5 consecutive business days in which the daily price for frozen concentrated orange juice is greater than the trigger price.

(2) NOTICE OF DETERMINATIONS.—The Secretary shall immediately notify the Commissioner of Customs and publish notice in the Federal Register of any determination under paragraph (1), and the date of such publication shall be the determination date for that determination.

(b) IMPORTS OF MEXICAN ARTICLES.—Whenever after any determination date for a determination under subsection (a)(1)(A), the quantity of Mexican articles of frozen concentrated orange juice that is entered exceeds—

(1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002; or

(2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007;

the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable limitation in paragraph (1) or (2) is reached and before the determination date for the related determination under subsection (a)(1)(B) shall be the rate of duty specified in subsection (c).

(c) RATE OF DUTY.—The rate of duty specified for purposes of subsection (b) for articles entered on any day is the rate in the HTS that is the lower of—

(1) the column 1–General rate of duty in effect for such articles on July 1, 1991; or

(2) the column 1–General rate of duty in effect on that day.

(d) DEFINITIONS.—For purposes of this section—

(1) The term ''daily price'' means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange.

(2) The term ''business day'' means a day in which contracts for frozen concentrated orange juice are being traded on the New York Cotton Exchange, or any successor as determined by the Secretary.

(3) The term ''entered'' means entered or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) The term ''frozen concentrated orange juice'' means all products classifiable under subheading 2009.11.00 of the HTS.

(5) The term ''Secretary'' means the Secretary of Agriculture.

(6) The term ''trigger price'' means the average daily closing price of the New York Cotton Ex-

change, or any successor as determined by the Secretary, for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

## PART 2—RELIEF FROM IMPORTS FROM ALL COUNTRIES

### SEC. 311. NAFTA ARTICLE IMPACT IN IMPORT RELIEF CASES UNDER THE TRADE ACT OF 1974.

(a) IN GENERAL.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the International Trade Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the International Trade Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether—

(1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and

(2) imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries consid-

ered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

(b) FACTORS.—

(1) SUBSTANTIAL IMPORT SHARE.—In determining whether imports from a NAFTA country, considered individually, account for a substantial share of total imports, such imports normally shall not be considered to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article subject to the investigation, measured in terms of import share during the most recent 3-year period.

(2) APPLICATION OF ''CONTRIBUTE IMPORTANTLY'' STANDARD.—In determining whether imports from a NAFTA country or countries contribute importantly to the serious injury, or threat thereof, the International Trade Commission shall consider such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports of such country or countries. In applying the preceding sentence, imports from a NAFTA country or countries normally shall not be considered to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from such country or coun-

tries during the period in which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

(c) DEFINITION.—For purposes of this section and section 312(a), the term ''contribute importantly'' refers to an important cause, but not necessarily the most important cause.

**SEC. 312. PRESIDENTIAL ACTION REGARDING NAFTA IMPORTS.**

(a) IN GENERAL.—In determining whether to take action under chapter 1 of title II of the Trade Act of 1974 with respect to imports from a NAFTA country, the President shall determine whether—

(1) imports from such country, considered individually, account for a substantial share of total imports; or

(2) imports from a NAFTA country, considered individually, or in exceptional circumstances imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, found by the International Trade Commission.

(b) EXCLUSION OF NAFTA IMPORTS.—In determining the nature and extent of action to be taken under

chapter 1 of title II of the Trade Act of 1974, the President shall exclude from such action imports from a NAFTA country if the President makes a negative determination under subsection (a)(1) or (2) with respect to imports from such country.

(c) ACTION AFTER EXCLUSION OF NAFTA COUNTRY IMPORTS.—

(1) IN GENERAL.—If the President, under subsection (b), excludes imports from a NAFTA country or countries from action under chapter 1 of title II of the Trade Act of 1974 but thereafter determines that a surge in imports from that country or countries is undermining the effectiveness of the action—

(A) the President may take appropriate action under such chapter 1 to include those imports in the action; and

(B) any entity that is representative of an industry for which such action is being taken may request the International Trade Commission to conduct an investigation of the surge in such imports.

(2) INVESTIGATION.—Upon receiving a request under paragraph (1)(B), the International Trade Commission shall conduct an investigation to deter-

mine whether a surge in such imports undermines the effectiveness of the action. The International Trade Commission shall submit the findings of its investigation to the President no later than 30 days after the request is received by the International Trade Commission.

(3) DEFINITION.—For purposes of this subsection, the term ''surge'' means a significant increase in imports over the trend for a recent representative base period.

(d) CONDITION APPLICABLE TO QUANTITATIVE RESTRICTIONS.—Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article, with allowance for reasonable growth.

## PART 3—GENERAL PROVISIONS

### SEC. 315. PROVISIONAL RELIEF.

Section 202(d) of the Trade Act of 1974 (19 U.S.C. 2252(d)) is amended—

(1) in paragraph (1)(A) by inserting ''or citrus product'' after ''agricultural product'' each place it appears;

(2) in the text of paragraph (1)(C) that appears before subclauses (I) and (II)—

(A) by inserting ''or citrus product'' after ''agricultural product'' each place it appears, and

(B) by inserting ''or citrus product'' after ''perishable product'';

(3) by redesignating subparagraphs (A) and (B) of paragraph (5) as subparagraphs (B) and (C); and

(4) by inserting a new subparagraph (A) in paragraph (5) to read as follows:

''(A) The term 'citrus product' means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.''.

**SEC. 316. MONITORING.**

For purposes of expediting an investigation concerning provisional relief under this subtitle or section 202 of the Trade Act of 1974 regarding—

(1) fresh or chilled tomatoes provided for in subheading 0702.00.00 of the HTS; and

(2) fresh or chilled peppers, other than chili peppers provided for in subheading 0709.60.00 of the HTS;

the International Trade Commission, until January 1, 2009, shall monitor imports of such goods as if proper requests for such monitoring had been made under subsection 202(d)(1)(C)(i) of such section 202. At the request of the International Trade Commission, the Secretary of Agriculture and the Commissioner of Customs shall provide to the International Trade Commission information relevant to the monitoring carried out under this section.

**SEC. 317. PROCEDURES CONCERNING THE CONDUCT OF INTERNATIONAL TRADE COMMISSION INVESTIGATIONS.**

(a) PROCEDURES AND RULES.—The International Trade Commission shall adopt such procedures and rules and regulations as are necessary to bring its procedures into conformity with chapter 8 of the Agreement.

(b) CONFORMING AMENDMENT.—Section 202(a) of the Trade Act of 1974 is amended by adding at the end thereof the following:

''(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter and part 1 of title III of the North American Free Trade Agreement Implementation Act.''.

**SEC. 318. EFFECTIVE DATE.**

Except as provided in section 308(b), the provisions of this subtitle take effect on the date the Agreement enters into force with respect to the United States.

## Subtitle B—Agriculture

**SEC. 321. AGRICULTURE.**

(a) MEAT IMPORT ACT OF 1979.—The Meat Import Act of 1979 (19 U.S.C. 2253 note) is amended—

(1) in subsection (b)—

(A) by striking the last sentence in paragraph (2),

(B) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

''(3) The term 'meat articles' does not include any article described in paragraph (2) that—

''(A) originates in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act), or

''(B) originates in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies such Agreement to, Canada.''; and

(C) by inserting after paragraph (4) (as redesignated by subparagraph (B) of this paragraph) the following new paragraphs:

''(5) The term 'NAFTA Act' means the North American Free Trade Agreement Implementation Act.

''(6) The term 'NAFTA country' has the meaning given such term in section 2(4) of the NAFTA Act.'';

(2) in subsection (f)(1), by striking the end period and inserting '', except that the President may exclude any such article originating in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act) or, if paragraph (3)(B) applies, any such article originating in Canada as determined in accordance with such paragraph (3)(B).''; and

(3) in subsection (i), by inserting ''and Mexico'' after ''Canada'' each place it appears.

(b) SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT.—

(1) IN GENERAL.—The President may, pursuant to article 309 and Annex 703.2 of the Agreement, exempt from any quantitative limitation or fee imposed pursuant to section 22 of the Agricultural

Adjustment Act (7 U.S.C. 624), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, any article which originates in Mexico, if Mexico is a NAFTA country.

(2) QUALIFICATION OF ARTICLES.—The determination of whether an article originates in Mexico shall be made in accordance with section 202, except that operations performed in, or materials obtained from, any country other than the United States or Mexico shall be treated as if performed in or obtained from a country other than a NAFTA country.

(c) TARIFF RATE QUOTAS.—In implementing the tariff rate quotas set out in the United States Schedule to Annex 302.2 of the Agreement, the President shall take such action as may be necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

(d) PEANUTS.—

(1) EFFECT OF THE AGREEMENT.—

(A) IN GENERAL.—Nothing in the Agreement or this Act reduces or eliminates—

(i) any penalty required under section 358e(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a(d)); or

(ii) any requirement under Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts, on peanuts in the domestic market, pursuant to section 108B(f) of the Agricultural Act of 1949 (7 U.S.C. 1445c–3(f)).

(B) REENTRY OF EXPORTED PEANUTS.—Paragraph (6) of section 358e(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a(d)(6)) is amended to read as follows:

''(6) REENTRY OF EXPORTED PEANUTS.—

''(A) PENALTY.—If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer of the peanuts shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.

''(B) RECORDS.—Each person, firm, or handler who imports peanuts into the United States shall maintain such records and documents as are required by the Secretary to ensure compliance with this subsection.''.

(2) CONSULTATIONS ON IMPORTS.—It is the sense of Congress that the United States should re-

quest consultations in the Working Group on Emergency Action, established in the Understanding Between the Parties to the North American Free Trade Agreement Concerning Chapter Eight—Emergency Action, if imports of peanuts exceed the in-quota quantity under a tariff rate quota set out in the United States Schedule to Annex 302.2 of the Agreement concerning whether—

(A) the increased imports of peanuts constitute a substantial cause of, or contribute importantly to, serious injury, or threat of serious injury, to the domestic peanut industry; and

(B) recourse under Chapter Eight of the Agreement or Article XIX of the General Agreement on Tariffs and Trade is appropriate.

(e) FRESH FRUITS, VEGETABLES, AND CUT FLOWERS.—

(1) IN GENERAL.—The Secretary of Agriculture shall collect and compile the information specified under paragraph (3), if reasonably available, from appropriate Federal departments and agencies and the relevant counterpart ministries of the Government of Mexico.

(2) DESIGNATION OF AN OFFICE.—The Secretary of Agriculture shall designate an office within

the United States Department of Agriculture to be responsible for maintaining and disseminating, in a timely manner, the data accumulated for verifying citrus, fruit, vegetable, and cut flower trade between the United States and Mexico. The information shall be made available to the public and the NAFTA Agriculture Committee Working Groups.

(3) INFORMATION COLLECTED.—The information to be collected, if reasonably available, includes—

(A) monthly fresh fruit, fresh vegetable, fresh citrus, and processed citrus product import and export data;

(B) monthly citrus juice production and export data;

(C) data on inspections of shipments of citrus, vegetables, and cut flowers entering the United States from Mexico; and

(D) in the case of fruits, vegetables, and cut flowers entering the United States from Mexico, data regarding—

(i) planted and harvested acreage; and

(ii) wholesale prices, quality, and grades.

(f) END-USE CERTIFICATES.—

(1) IN GENERAL.—The Secretary of Agriculture (referred to in this subsection as the ''Secretary'') shall implement, in coordination with the Commissioner of Customs, a program requiring that end-use certificates be included in the documentation covering the entry into, or the withdrawal from a warehouse for consumption in, the customs territory of the United States—

(A) of any wheat that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of wheat that is a product of the United States (referred to in this subsection as ''United States-produced wheat''); and

(B) of any barley that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of barley that is a product of the United States (referred to in this subsection as ''United States-produced barley'').

(2) REGULATIONS.—The Secretary shall prescribe by regulation such requirements regarding the information to be included in end-use certificates as

may be necessary and appropriate to carry out this subsection.

(3) PRODUCER PROTECTION DETERMINATION.—At any time after the effective date of the requirements established under paragraph (1), the Secretary may, subject to paragraph (5), suspend the requirements when making a determination, after consultation with domestic producers, that the program implemented under this subsection has directly resulted in—

(A) the reduction of income to the United States producers of agricultural commodities; or

(B) the reduction of the competitiveness of United States agricultural commodities in the world export markets.

(4) SUSPENSION OF REQUIREMENTS.—

(A) WHEAT.—If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced wheat as of the effective date of the requirement under paragraph (1)(A) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(A) beginning 30 calendar days after suspension by the foreign country or instrumentality.

(B) BARLEY.—If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced barley as of the effective date of the requirement under paragraph (1)(B) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(B) beginning 30 calendar days after suspension by the foreign country or instrumentality.

(5) REPORT TO CONGRESS.—The Secretary shall not suspend the requirements established under paragraph (1) under circumstances identified in paragraph (3) before the Secretary submits a report to Congress detailing the determination made under paragraph (3) and the reasons for making the determination.

(6) COMPLIANCE.—It shall be a violation of section 1001 of title 18, United States Code, for a person to engage in fraud or knowingly violate this subsection or a regulation implementing this subsection.

(7) EFFECTIVE DATE.—This subsection shall become effective on the date that is 120 days after the date of enactment of this Act.

(g) AGRICULTURAL FELLOWSHIP PROGRAM.—Section 1542(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 7 U.S.C. 5622 note) is amended by adding at the end the following new paragraph:

''(3) AGRICULTURAL FELLOWSHIPS FOR NAFTA COUNTRIES.—

''(A) IN GENERAL.—The Secretary shall grant fellowships to individuals from countries that are parties to the North American Free Trade Agreement (referred to in this paragraph as 'NAFTA') to study agriculture in the United States, and to individuals in the United States to study agriculture in other NAFTA countries.

''(B) PURPOSE.—The purpose of fellowships granted under this paragraph is—

''(i) to allow the recipients to expand their knowledge and understanding of agricultural systems and practices in other NAFTA countries;

''(ii) to facilitate the improvement of agricultural systems in NAFTA countries; and

"(iii) to establish and expand agricultural trade linkages between the United States and other NAFTA countries.

"(C) ELIGIBLE RECIPIENTS.—The Secretary may provide fellowships under this paragraph to agricultural producers and consultants, government officials, and other individuals from the private and public sectors.

"(D) ACCEPTANCE OF GIFTS.—The Secretary may accept money, funds, property, and services of every kind by gift, devise, bequest, grant, or otherwise, and may in any manner, dispose of all of the holdings and use the receipts generated from the disposition to carry out this paragraph. Receipts under this paragraph shall remain available until expended.

"(E) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to carry out this paragraph.".

(h) ASSISTANCE FOR AFFECTED FARMWORKERS.—

(1) IN GENERAL.—Subject to paragraph (3), if at any time the Secretary of Agriculture determines that the implementation of the Agreement has caused low-income migrant or seasonal farmworkers

to lose income, the Secretary may make available grants, not to exceed $20,000,000 for any fiscal year, to public agencies or private organizations with tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, that have experience in providing emergency services to low-income migrant or seasonal farmworkers. Emergency services to be provided with assistance received under this subsection may include such types of assistance as the Secretary determines to be necessary and appropriate.

(2) DEFINITION.—As used in this subsection, the term ''low-income migrant or seasonal farmworker'' shall have the same meaning as provided in section 2281(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (42 U.S.C. 5177a(b)).

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $20,000,000 for each fiscal year to carry out this subsection.

(i) BIENNIAL REPORT ON EFFECTS OF THE AGREEMENT ON AMERICAN AGRICULTURE.—

(1) IN GENERAL.—The Secretary of Agriculture shall prepare a biennial report on the effects of the Agreement on United States producers of agricul-

tural commodities and on rural communities located in the United States.

(2) CONTENTS OF REPORT.—The report required under this subsection shall include—

(A) an assessment of the effects of implementing the Agreement on the various agricultural commodities affected by the Agreement, on a commodity-by-commodity basis;

(B) an assessment of the effects of implementing the Agreement on investments made in United States agriculture and on rural communities located in the United States;

(C) an assessment of the effects of implementing the Agreement on employment in United States agriculture, including any gains or losses of jobs in businesses directly or indirectly related to United States agriculture; and

(D) such other information and data as the Secretary determines appropriate.

(3) SUBMISSION OF REPORT.—The Secretary shall furnish the report required under this subsection to the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Agriculture of the House of Representatives. The report shall be due every 2 years and shall be submit-

ted by March 1 of the year in which the report is due. The first report shall be due by March 1, 1997, and the final report shall be due by March 1, 2011.

## Subtitle C—Intellectual Property

**SEC. 331. TREATMENT OF INVENTIVE ACTIVITY.**

Section 104 of title 35, United States Code, is amended to read as follows:

**"§ 104. Invention made abroad**

''(a) IN GENERAL.—In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States or a NAFTA country and serving in any other country in connection with operations by or on behalf of the United States or a NAFTA country, the person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States or a NAFTA country. To the extent that any information in a NAFTA country concerning knowledge, use, or other activity relevant to proving

or disproving a date of invention has not been made available for use in a proceeding in the Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

''(b) DEFINITION.—As used in this section, the term 'NAFTA country' has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act.''.

**SEC. 332. RENTAL RIGHTS IN SOUND RECORDINGS.**

Section 4 of the Record Rental Amendment of 1984 (17 U.S.C. 109 note) is amended by striking out subsection (c).

**SEC. 333. NONREGISTRABILITY OF MISLEADING GEOGRAPHIC INDICATIONS.**

(a) MARKS NOT REGISTRABLE ON THE PRINCIPAL REGISTER.—Section 2 of the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946, commonly referred to as the Trademark Act of 1946 (15 U.S.C. 1052(e)), is amended—

(1) by amending subsection (e) to read as follows:

''(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 4, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, or (4) is primarily merely a surname.''; and

(2) in subsection (f)—

(A) by striking out ''and (d)'' and inserting ''(d), and (e)(3)''; and

(B) by adding at the end the following new sentence: ''Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before the date of the enactment of the North American Free Trade Agreement Implementation Act.''.

(b) SUPPLEMENTAL REGISTER.—Section 23(a) of the Trademark Act of 1946 (15 U.S.C. 1091(a)) is amended—

(1) by striking out ''and (d)'' and inserting ''(d), and (e)(3)''; and

(2) by adding at the end the following new sentence: ''Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this Act, that is declared to be unregistrable under section 2(e)(3), if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before the date of the enactment of the North American Free Trade Agreement Implementation Act.''.

**SEC. 334. MOTION PICTURES IN THE PUBLIC DOMAIN.**

(a) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by inserting after section 104 the following new section:

**''§ 104A. Copyright in certain motion pictures**

''(a) RESTORATION OF COPYRIGHT.—Subject to subsections (b) and (c)—

''(1) any motion picture that is first fixed or published in the territory of a NAFTA country as

defined in section 2(4) of the North American Free Trade Agreement Implementation Act to which Annex 1705.7 of the North American Free Trade Agreement applies, and

''(2) any work included in such motion picture that is first fixed in or published with such motion picture,

that entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by section 401, 402, or 403 of this title, the absence of which has not been excused by the operation of section 405 of this title, as such sections were in effect during that period, shall have copyright protection under this title for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice.

''(b) EFFECTIVE DATE OF PROTECTION.—The protection provided under subsection (a) shall become effective, with respect to any motion picture or work included in such motion picture meeting the criteria of that subsection, 1 year after the date on which the North American Free Trade Agreement enters into force with respect to, and the United States applies the Agreement to, the country in whose territory the motion picture was first

fixed or published if, before the end of that 1-year period, the copyright owner in the motion picture or work files with the Copyright Office a statement of intent to have copyright protection restored under subsection (a). The Copyright Office shall publish in the Federal Register promptly after that effective date a list of motion pictures, and works included in such motion pictures, for which protection is provided under subsection (a).

''(c) USE OF PREVIOUSLY OWNED COPIES.—A national or domiciliary of the United States who, before the date of the enactment of the North American Free Trade Agreement Implementation Act, made or acquired copies of a motion picture, or other work included in such motion picture, that is subject to protection under subsection (a), may sell or distribute such copies or continue to perform publicly such motion picture and other work without liability for such sale, distribution, or performance, for a period of 1 year after the date on which the list of motion pictures, and works included in such motion pictures, that are subject to protection under subsection (a) is published in the Federal Register under subsection (b).''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 104 the following new item:

''104A. Copyright in certain motion pictures.''.

**SEC. 335. EFFECTIVE DATES.**

(a) IN GENERAL.—Subject to subsections (b) and (c), the amendments made by this subtitle take effect on the date the Agreement enters into force with respect to the United States.

(b) SECTION 331.—The amendments made by section 331 shall apply to all patent applications that are filed on or after the date of the enactment of this Act: *Provided*, That an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a NAFTA country, except as provided in sections 119 and 365 of title 35, United States Code, that is earlier than the date of the enactment of this Act.

(c) SECTION 333.—The amendments made by section 333 shall apply only to trademark applications filed on or after the date of the enactment of this Act.

## Subtitle D—Temporary Entry of Business Persons

**SEC. 341. TEMPORARY ENTRY.**

(a) NONIMMIGRANT TRADERS AND INVESTORS.—Upon a basis of reciprocity secured by the Agreement, an alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, may, if otherwise eligible for a visa and if otherwise admissible into the United States under

the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in Section B of Annex 1603 of the Agreement, but only if any such purpose shall have been specified in such Annex on the date of entry into force of the Agreement. For purposes of this section, the term ''citizen of Mexico'' means ''citizen'' as defined in Annex 1608 of the Agreement.

(b) NONIMMIGRANT PROFESSIONALS AND ANNUAL NUMERICAL LIMIT.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by redesignating subsection (e) as paragraph (1) of subsection (e) and adding after such paragraph (1), as redesignated, the following new paragraphs:

''(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as 'NAFTA') to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney

General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15). The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term 'citizen of Mexico' means 'citizen' as defined in Annex 1608 of NAFTA.

''(3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit—

''(A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and

''(B) shall cease to apply as provided for in paragraph 3 of such Appendix.

''(4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if—

''(A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);

''(B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—

''(i) the action proposed to be taken and the reasons therefor, and

''(ii) the advice obtained under subparagraph (A);

''(C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and (B) with respect to such action has expired; and

''(D) the President has consulted with such committees regarding the proposed action during the period referred to in subparagraph (C).

''(5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 212(m), in the case of a registered nurse, or

the application requirement of section 212(n), in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition requirement of subsection (c), to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 212(m) and 212(n), and the Attorney General, with respect to subsection (c).''.

(c) LABOR DISPUTES.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

''(j) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this subsection shall be given as may be required by paragraph 3 of article

1603 of such Agreement. For purposes of this subsection, the term 'citizen of Mexico' means 'citizen' as defined in Annex 1608 of such Agreement.''.

**SEC. 342. EFFECTIVE DATE.**

The provisions of this subtitle take effect on the date the Agreement enters into force with respect to the United States.

# Subtitle E—Standards

## PART 1—STANDARDS AND MEASURES

**SEC. 351. STANDARDS AND SANITARY AND PHYTOSANITARY MEASURES.**

(a) IN GENERAL.—Title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 et seq.) is amended by inserting at the end the following new subtitle:

# "Subtitle E—Standards and Measures Under the North American Free Trade Agreement

## "CHAPTER 1—SANITARY AND PHYTOSANITARY MEASURES

**"SEC. 461. GENERAL.**

''Nothing in this chapter may be construed—

''(1) to prohibit a Federal agency or State agency from engaging in activity related to sanitary or phytosanitary measures to protect human, animal, or plant life or health; or

''(2) to limit the authority of a Federal agency or State agency to determine the level of protection of human, animal, or plant life or health the agency considers appropriate.

**"SEC. 462. INQUIRY POINT.**

''The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

''(1) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure proposed, adopted, or maintained by a Federal or State agency;

''(2) the procedures of a Federal or State agency for risk assessment, and factors the agency considers in conducting the assessment and in establishing the levels of protection that the agency considers appropriate;

''(3) the membership and participation of the Federal Government and State governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and

phytosanitary measures, and the provisions of those systems and arrangements; and

''(4) the location of notices of the type required under article 719 of the NAFTA, or where the information contained in such notices can be obtained.

**"SEC. 463. CHAPTER DEFINITIONS.**

''Notwithstanding section 451, for purposes of this chapter—

''(1) ANIMAL.—The term 'animal' includes fish, bees, and wild fauna.

''(2) APPROVAL PROCEDURE.—The term 'approval procedure' means any registration, notification, or other mandatory administrative procedure for—

''(A) approving the use of an additive for a stated purpose or under stated conditions, or

''(B) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage, or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage, or feedstuff containing the additive or contaminant.

''(3) CONTAMINANT.—The term 'contaminant' includes pesticide and veterinary drug residues and extraneous matter.

''(4) CONTROL OR INSPECTION PROCEDURE.—The term 'control or inspection procedure' means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing, or use of a good, but does not mean an approval procedure.

''(5) PLANT.—The term 'plant' includes wild flora.

''(6) RISK ASSESSMENT.—The term 'risk assessment' means an evaluation of—

''(A) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

''(B) the potential for adverse effects on human or animal life or health arising from the

presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff.

''(7) SANITARY OR PHYTOSANITARY MEASURE.—

''(A) IN GENERAL.—The term 'sanitary or phytosanitary measure' means a measure to—

''(i) protect animal or plant life or health in the United States from risks arising from the introduction, establishment, or spread of a pest or disease;

''(ii) protect human or animal life or health in the United States from risks arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food, beverage, or feedstuff;

''(iii) protect human life or health in the United States from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or

''(iv) prevent or limit other damage in the United States arising from the introduction, establishment, or spread of a pest.

''(B) FORM.—The form of a sanitary or phytosanitary measure includes—

''(i) end product criteria;

''(ii) a product-related processing or production method;

''(iii) a testing, inspection, certification, or approval procedure;

''(iv) a relevant statistical method;

''(v) a sampling procedure;

''(vi) a method of risk assessment;

''(vii) a packaging and labeling requirement directly related to food safety; and

''(viii) a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation.

## "CHAPTER 2—STANDARDS-RELATED MEASURES

### "SEC. 471. GENERAL.

''(a) NO BAR TO ENGAGING IN STANDARDS ACTIVITY.—Nothing in this chapter shall be construed—

''(1) to prohibit a Federal agency from engaging in activity related to standards-related measures,

including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment or consumers; or

''(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment or consumers.

''(b) EXCLUSION.—This chapter does not apply to—

''(1) technical specifications prepared by a Federal agency for production or consumption requirements of the agency; or

''(2) sanitary or phytosanitary measures under chapter 1.

**''SEC. 472. INQUIRY POINT.**

''The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

''(1) the membership and participation of the Federal Government, State governments, and relevant nongovernmental bodies in the United States in international and regional standardizing bodies and conformity assessment systems, and in bilateral and multilateral arrangements regarding standards-

related measures, and the provisions of those systems and arrangements;

''(2) the location of notices of the type required under article 909 of the NAFTA, or where the information contained in such notice can be obtained; and

''(3) the Federal agency procedures for assessment of risk, and factors the agency considers in conducting the assessment and establishing the levels of protection that the agency considers appropriate.

**"SEC. 473. CHAPTER DEFINITIONS.**

''Notwithstanding section 451, for purposes of this chapter—

''(1) APPROVAL PROCEDURE.—The term 'approval procedure' means any registration, notification, or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions.

''(2) CONFORMITY ASSESSMENT PROCEDURE.—The term 'conformity assessment procedure' means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evalua-

tion, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure.

''(3) OBJECTIVE.—The term 'objective' includes—

''(A) safety,

''(B) protection of human, animal, or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and

''(C) sustainable development,

but does not include the protection of domestic production.

''(4) SERVICE.—The term 'service' means a land transportation service or a telecommunications service.

''(5) STANDARD.—The term 'standard' means—

''(A) characteristics for a good or a service,

''(B) characteristics, rules, or guidelines for—

''(i) processes or production methods relating to such good, or

"(ii) operating methods relating to such service, and

"(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—

"(i) a good or its related process or production methods, or

"(ii) a service or its related operating methods,

for common and repeated use, including explanatory and other related provisions set out in a document approved by a standardizing body, with which compliance is not mandatory.

"(6) STANDARDS-RELATED MEASURE.—The term 'standards-related measure' means a standard, technical regulation, or conformity assessment procedure.

"(7) TECHNICAL REGULATION.—The term 'technical regulation' means—

"(A) characteristics or their related processes and production methods for a good,

"(B) characteristics for a service or its related operating methods, or

"(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—

''(i) a good or its related process or production method, or

''(ii) a service or its related operating method,

set out in a document, including applicable administrative, explanatory, and other related provisions, with which compliance is mandatory.

''(8) TELECOMMUNICATIONS SERVICE.—The term 'telecommunications service' means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast, or other electromagnetic distribution of radio or television programming to the public generally.

## "CHAPTER 3—SUBTITLE DEFINITIONS

### "SEC. 481. DEFINITIONS.

''Notwithstanding section 451, for purposes of this subtitle—

''(1) NAFTA.—The term 'NAFTA' means the North American Free Trade Agreement.

''(2) STATE.—The term 'State' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.''.

(b) TECHNICAL AMENDMENTS.—

(1) DEFINITION OF TRADE REPRESENTATIVE.—Section 451(12) of the Trade Agreements Act of 1979 is amended to read as follows:

''(12) TRADE REPRESENTATIVE.—The term 'Trade Representative' means the United States Trade Representative.''.

(2) CONFORMING AMENDMENTS.—Title IV of the Trade Agreement Act of 1979 is further amended—

(A) by striking out ''Special Representative'' each place it appears and inserting ''Trade Representative''; and

(B) in the section heading to section 411, by striking out ''**SPECIAL REPRESENTATIVE**'' and inserting ''**TRADE REPRESENTATIVE**''.

**SEC. 352. TRANSPORTATION.**

No regulation issued by the Secretary of Transportation implementing a recommendation of the Land Transportation Standards Subcommittee established under article 913(5)(a)(i) of the Agreement may take effect before the date 90 days after the date of issuance.

## PART 2—AGRICULTURAL STANDARDS

### SEC. 361. AGRICULTURAL TECHNICAL AND CONFORMING AMENDMENTS.

(a) FEDERAL SEED ACT.—Section 302(e)(1) of the Federal Seed Act (7 U.S.C. 1582(e)(1)) is amended by inserting ''or Mexico'' after ''Canada''.

(b) IMPORTATION OF ANIMALS.—The first sentence of section 6 of the Act of August 30, 1890 (26 Stat. 416, chapter 839; 21 U.S.C. 104), is amended by striking '': *Provided*'' and all that follows through the period at the end of the sentence and inserting '', except that the Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may (1) permit the importation of cattle, sheep, or other ruminants, and swine, from Canada or Mexico, and (2) permit the importation from the British Virgin Islands into the Virgin Islands of the United States, for slaughter only, of cattle that have been infested with or exposed to ticks on being freed from the ticks.''.

(c) INSPECTION OF ANIMALS.—Section 10 of the Act of August 30, 1890 (26 Stat. 417, chapter 839; 21 U.S.C. 105), is amended—

(1) by inserting above ''SEC. 10.'' the following new section heading:

**"SEC. 10. INSPECTION OF ANIMALS.";**

(2) by striking ''SEC. 10. That the Secretary of Agriculture shall'' and inserting ''(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of Agriculture shall''; and

(3) by adding at the end the following new subsection:

''(b) EXCEPTION.—The Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may waive any provision of subsection (a) in the case of shipments between the United States and Canada or Mexico.''.

(d) DISEASE-FREE COUNTRIES OR REGIONS.—

(1) TARIFF ACT OF 1930.—Section 306 of the Tariff Act of 1930 (19 U.S.C. 1306) is amended—

(A) in subsection (a), by striking ''RINDERPEST AND FOOT-AND-MOUTH DISEASE.—If the Secretary of Agriculture'' and inserting ''IN GENERAL.—Except as provided in subsection (b), if the Secretary of Agriculture''; and

(B) by striking subsection (b) and inserting the following new subsection:

''(b) EXCEPTION.—The Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of cattle, sheep, other ruminants, or swine (including embryos of the

animals), or the fresh, chilled, or frozen meat of the animals, from a region if the Secretary determines that the region from which the animal or meat originated is, and is likely to remain, free from rinderpest and foot-and-mouth disease.''.

(2) HONEYBEE ACT.—The first section of the Act of August 31, 1922 (commonly known as the ''Honeybee Act'') (42 Stat. 833, chapter 301; 7 U.S.C. 281), is amended—

(A) in subsection (a)—

(i) by striking '', or'' at the end of paragraph (1) and inserting a semicolon;

(ii) by striking the period at the end of paragraph (2) and inserting ''; or''; and

(iii) by adding at the end the following new paragraph:

''(3) from Canada or Mexico, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees.''; and

(B) in subsection (b)—

(i) by inserting ''(1)'' after ''imported into the United States only from''; and

(ii) by inserting before the period the following: '', or (2) Canada or Mexico, if the Secretary of Agriculture determines that the region of Canada or Mexico from which the imports originate is, and is likely to remain, free of undesirable species or subspecies of honeybees''.

(e) POULTRY PRODUCTS INSPECTION ACT.—Section 17(d) of the Poultry Products Inspection Act (21 U.S.C. 466(d)) is amended—

(1) in paragraph (1), by inserting after ''Notwithstanding any other provision of law,'' the following: ''except as provided in paragraph (2),'';

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(3) by inserting after paragraph (1) the following new paragraph:

''(2)(A) Notwithstanding any other provision of law, all poultry, or parts or products of poultry, capable of use as human food offered for importation into the United States from Canada and Mexico shall—

''(i) comply with paragraph (1); or

''(ii)(I) be subject to inspection, sanitary, quality, species verification, and residue standards that are equivalent to United States standards; and

''(II) have been processed in facilities and under conditions that meet standards that are equivalent to United States standards.

''(B) The Secretary may treat as equivalent to a United States standard a standard of Canada or Mexico described in subparagraph (A)(ii) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the standard of the exporting country achieves the level of protection that the Secretary considers appropriate.

''(C) The Secretary may—

''(i) determine, on a scientific basis, that the standard of the exporting country does not achieve the level of protection that the Secretary considers appropriate; and

''(ii) provide the basis for the determination in writing to the exporting country on request.''.

(f) FEDERAL MEAT INSPECTION ACT.—Section 20(e) of the Federal Meat Inspection Act (21 U.S.C. 620(e)) is amended—

(1) by striking ''not be limited to—'' and inserting ''not be limited to the following:'';

(2) by striking paragraph (1);

(3) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively;

(4) by inserting after ''not be limited to the following:'' (as amended by paragraph (1)) the following new paragraphs:

''(1)(A) Subject to subparagraphs (B) and (C), a certification by the Secretary that foreign plants in Canada and Mexico that export carcasses or meat or meat products referred to in subsection (a) have complied with paragraph (2) or with requirements that are equivalent to United States requirements with regard to all inspection and building construction standards, and all other provisions of this Act and regulations issued under this Act.

''(B) Subject to subparagraph (C), the Secretary may treat as equivalent to a United States requirement a requirement described in subparagraph (A) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the requirement or standard of the

exporting country achieves the level of protection that the Secretary considers appropriate.

''(C) The Secretary may—

''(i) determine, on a scientific basis, that a requirement of an exporting country does not achieve the level of protection that the Secretary considers appropriate; and

''(ii) provide the basis for the determination to the exporting country in writing on request.

''(2) A certification by the Secretary that, except as provided in paragraph (1), foreign plants that export carcasses or meat or meat products referred to in subsection (a) have complied with requirements that are at least equal to all inspection and building construction standards and all other provisions of this Act and regulations issued under this Act.'';

(5) in paragraphs (3) through (7) (as redesignated by paragraph (3)), by striking ''the'' the first place it appears in each paragraph and inserting ''The'';

(6) in paragraphs (3) through (5) (as so redesignated), by striking the semicolon at the end of each paragraph and inserting a period; and

(7) in paragraph (6) (as so redesignated), by striking ''; and'' at the end and inserting a period.

(g) PEANUT BUTTER AND PEANUT PASTE.—

(1) IN GENERAL.—Except as provided in paragraph (2), all peanut butter and peanut paste in the United States domestic market shall be processed from peanuts that meet the quality standards established for peanuts under Marketing Agreement No. 146.

(2) IMPORTS.—Peanut butter and peanut paste imported into the United States shall comply with paragraph (1) or with sanitary measures that achieve at least the same level of sanitary protection.

(h) ANIMAL HEALTH BIOCONTAINMENT FACILITY.—

(1) GRANT FOR CONSTRUCTION.—The Secretary of Agriculture shall make a grant to a land grant college or university described in paragraph (2) for the construction of a facility at the college or university for the conduct of research in animal health, disease-transmitting insects, and toxic chemicals that requires the use of biocontainment facilities and equipment. The facility to be constructed with the grant shall be known as the ''Southwest Regional Animal Health Biocontainment Facility''.

(2) GRANT RECIPIENT DESCRIBED.—To be eligible for the grant under paragraph (1), a land grant college or university must be—

(A) located in a State adjacent to the international border with Mexico; and

(B) determined by the Secretary of Agriculture to have an established program in animal health research and education and to have a collaborative relationship with one or more colleges of veterinary medicine or universities located in Mexico.

(3) ACTIVITIES OF THE FACILITY.—The facility constructed using the grant made under paragraph (1) shall be used for conducting the following activities:

(A) The biocontainment facility shall offer the ability to organize multidisciplinary international teams working on basic and applied research on diagnostic method development and disease control strategies, including development of vaccines.

(B) The biocontainment facility shall support research that will improve the scientific basis for regulatory activities, decreasing the

need for new regulatory programs and enhancing international trade.

(C) The biocontainment facility shall allow academic institutions, governmental agencies, and the private sector to conduct research in basic and applied research biology, epidemiology, pathogenesis, host response, and diagnostic methods, on disease agents that threaten the livestock industries of the United States and Mexico.

(D) The biocontainment facility may be used to support research involving food safety, toxicology, environmental pollutants, radioisotopes, recombinant microorganisms, and selected naturally resistant or transgenic animals.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subsection.

(i) REPORTS ON INSPECTION OF IMPORTED MEAT, POULTRY, OTHER FOODS, ANIMALS, AND PLANTS.—

(1) DEFINITIONS.—As used in this subsection:

(A) IMPORTS.—The term ''imports'' means any meat, poultry, other food, animal, or plant

that is imported into the United States in commercially significant quantities.

(B) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(2) IN GENERAL.—In consultation with representatives of other appropriate agencies, the Secretary shall prepare an annual report on the impact of the Agreement on the inspection of imports.

(3) CONTENTS OF REPORTS.—The report required under this subsection shall, to the maximum extent practicable, include a description of—

(A) the quantity or, with respect to the Customs Service, the number of shipments, of imports from a NAFTA country that are inspected at the borders of the United States with Canada and Mexico during the prior year;

(B) any change in the level or types of inspections of imports in each NAFTA country during the prior year;

(C) in any case in which the Secretary has determined that the inspection system of another NAFTA country is equivalent to the inspection system of the United States, the reasons supporting the determination of the Secretary;

(D) the incidence of violations of inspection requirements by imports from NAFTA countries during the prior year—

(i) at the borders of the United States with Mexico or Canada; or

(ii) at the last point of inspection in a NAFTA country prior to shipment to the United States if the agency accepts inspection in that country;

(E) the incidence of violations of inspection requirements of imports to the United States from Mexico or Canada prior to the implementation of the Agreement;

(F) any additional cost associated with maintaining an adequate inspection system of imports as a result of the implementation of the Agreement;

(G) any incidence of transshipment of imports—

(i) that originate in a country other than a NAFTA country;

(ii) that are shipped to the United States through a NAFTA country during the prior year; and

(iii) that are incorrectly represented by the importer to qualify for preferential treatment under the Agreement;

(H) the quantity and results of any monitoring by the United States of equivalent inspection systems of imports in other NAFTA countries during the prior year;

(I) the use by other NAFTA countries of sanitary and phytosanitary measures (as defined in the Agreement) to limit exports of United States meat, poultry, other foods, animals, and plants to the countries during the prior year; and

(J) any other information the Secretary determines to be appropriate.

(4) FREQUENCY OF REPORTS.—The Secretary shall submit—

(A) the initial report required under this subsection not later than January 31, 1995; and

(B) an annual report required under this subsection not later than 1 year after the date of the submission of the initial report and the end of each 1-year period thereafter through calendar year 2004.

(5) REPORT TO CONGRESS.—The Secretary shall prepare and submit the report required under this subsection to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

## Subtitle F—Corporate Average Fuel Economy

**SEC. 371. CORPORATE AVERAGE FUEL ECONOMY.**

(a) IN GENERAL.—Section 503(b)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(2)) is amended by adding at the end the following new subparagraph:

''(G)(i) In accordance with the schedule set out in clause (ii), an automobile shall be considered domestically manufactured in a model year if at least 75 percent of the cost to the manufacturer of the automobile is attributable to value added in the United States, Canada, or Mexico, unless the assembly of the automobile is completed in Canada or Mexico and the automobile is not imported into the United States prior to the expiration of 30 days following the end of that model year.

''(ii) Clause (i) shall apply to all automobiles manufactured by a manufacturer and sold in the

United States, wherever assembled, in accordance with the following schedule:

''(I) With respect to a manufacturer that initiated the assembly of automobiles in Mexico before model year 1992, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election.

''(II) With respect to a manufacturer initiating the assembly of automobiles in Mexico after model year 1991, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994, or the model year commencing after the date that the manufacturer initiates the assembly of automobiles in Mexico, whichever is later.

''(III) With respect to a manufacturer not described by subclause (I) or (II) assembling automobiles in the United States or Canada but not in Mexico, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the

model year commencing after the date of such election, except that if such manufacturer initiates the assembly of automobiles in Mexico before making such election, this subclause shall not apply and the manufacturer shall be subject to clause (II).

''(IV) With respect to a manufacturer not assembling automobiles in the United States, Canada, or Mexico, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994.

''(V) With respect to a manufacturer authorized to make an election under subclause (I) or (III) which has not made that election within the specified period, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 2004.

''(iii) The Secretary shall prescribe reasonable procedures for elections under this subparagraph, and the EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.''.

(b) CONFORMING AMENDMENTS.—The first sentence of section 503(b)(2)(E) of the Motor Vehicle Information

and Cost Savings Act (15 U.S.C. 2003(b)(2)(E)) is amended—

(1) by striking ''An'' and inserting ''Except as provided in subparagraph (G), an'', and

(2) in the last sentence, by striking ''this subparagraph'' and inserting ''this subparagraph and subparagraph (G)''.

## Subtitle G—Government Procurement

**SEC. 381. GOVERNMENT PROCUREMENT.**

(a) IN GENERAL.—Section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511) is amended—

(1) in subsection (a) by striking ''The President'' and inserting ''Subject to subsection (f) of this section, the President'';

(2) by inserting ''or the North American Free Trade Agreement'' after ''the Agreement'' in paragraph (1) of subsection (b); and

(3) by adding at the end the following new subsections:

''(e) PROCUREMENT PROCEDURES BY CERTAIN FEDERAL AGENCIES.—Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a–2 of the North American Free Trade Agreement to procure eligible products in

compliance with the procedural provisions of chapter 10 of such Agreement.

''(f) SMALL BUSINESS AND MINORITY PREFERENCES.—The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.''.

(b) RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.—Section 302(a) of such Act (19 U.S.C. 2512(a)) is amended by striking ''would otherwise be eligible products'' in paragraph (1) and inserting ''are products covered under the Agreement for procurement by the United States''.

(c) DEFINITION OF ELIGIBLE PRODUCT.—Section 308(4)(A) of such Act (19 U.S.C. 2518(4)(A)) is amended to read as follows:

''(A) IN GENERAL.—The term 'eligible product' means, with respect to any foreign country or instrumentality that is—

''(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States; or

''(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States.''.

(d) CONFORMING AMENDMENTS.—Section 401 of the Rural Electrification Act of 1938 (7 U.S.C. 903 note) is amended by inserting '', Mexico, or Canada'' after ''the United States'' each place it appears.

(e) EFFECTIVE DATE.—The provisions of this subtitle take effect on the date the Agreement enters into force with respect to the United States.

# TITLE IV—DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

## Subtitle A—Organizational, Administrative, and Procedural Provisions Regarding the Implementation of Chapter 19 of the Agreement

### SEC. 401. REFERENCES IN SUBTITLE.

Any reference in this subtitle to an Annex, chapter, or article shall be considered to be a reference to the respective Annex, chapter, or article of the Agreement.

### SEC. 402. ORGANIZATIONAL AND ADMINISTRATIVE PROVISIONS.

(a) CRITERIA FOR SELECTION OF INDIVIDUALS TO SERVE ON PANELS AND COMMITTEES.—

(1) IN GENERAL.—The selection of individuals under this section for—

(A) placement on lists prepared by the interagency group under subsection (c)(2)(B)(i) and (ii);

(B) placement on preliminary candidate lists under subsection (c)(3)(A);

(C) placement on final candidate lists under subsection (c)(4)(A);

(D) placement by the Trade Representative on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; and

(E) appointment by the Trade Representative for service on the panels and committees convened under chapter 19;

shall be made on the basis of the criteria provided in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 and shall be made without regard to political affiliation.

(2) ADDITIONAL CRITERIA FOR ROSTER PLACEMENTS AND APPOINTMENTS UNDER PARAGRAPH 1 OF ANNEX 1901.2.—Rosters described in paragraph 1 of Annex 1901.2 shall include, to the fullest extent practicable, judges and former judges who meet the criteria referred to in paragraph (1). The Trade Representative shall, subject to subsection (b), appoint judges to binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, where such judges offer and are available to serve and such service is

authorized by the chief judge of the court on which they sit.

(b) SELECTION OF CERTAIN JUDGES TO SERVE ON PANELS AND COMMITTEES.—

(1) APPLICABILITY.—This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, who are judges of courts created under article III of the Constitution of the United States.

(2) CONSULTATION WITH CHIEF JUDGES.—The Trade Representative shall consult, from time to time, with the chief judges of the Federal judicial circuits regarding the interest in, and availability for, participation in binational panels, extraordinary challenge committees, and special committees, of judges within their respective circuits. If the chief judge of a Federal judicial circuit determines that it is appropriate for one or more judges within that circuit to be included on a roster described in subsection (a)(1)(D), the chief judge shall identify all such judges for the Chief Justice of the United States who may, upon his or her approval, submit

the names of such judges to the Trade Representative. The Trade Representative shall include the names of such judges on the roster.

(3) SUBMISSION OF LISTS TO CONGRESS.—The Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on Finance and the Committee on the Judiciary of the Senate a list of all judges included on a roster under paragraph (2). Such list shall be submitted at the same time as the final candidate lists are submitted under subsection (c)(4)(A) and the final forms of amendments are submitted under subsection (c)(4)(C)(iv).

(4) APPOINTMENT OF JUDGES TO PANELS OR COMMITTEES.—At such time as the Trade Representative proposes to appoint a judge described in paragraph (1) to a binational panel, an extraordinary challenge committee, or a special committee, the Trade Representative shall consult with that judge in order to ascertain whether the judge is available for such appointment.

(c) SELECTION OF OTHER CANDIDATES.—

(1) APPLICABILITY.—This subsection applies only with respect to the selection of individuals for

binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, other than those individuals to whom subsection (b) applies.

(2) INTERAGENCY GROUP.—

(A) ESTABLISHMENT.—There is established within the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) an interagency group which shall—

(i) be chaired by the Trade Representative; and

(ii) consist of such officers (or the designees thereof) of the United States Government as the Trade Representative considers appropriate.

(B) FUNCTIONS.—The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19—

(i) prepare by January 3 of each calendar year—

(I) a list of individuals who are qualified to serve as members of bina-

tional panels convened under chapter 19; and

(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under chapter 19 and special committees established under article 1905;

(ii) if the Trade Representative makes a request under paragraph (4)(C)(i) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list;

(iii) exercise oversight of the administration of the United States Section that is authorized to be established under section 105; and

(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees and special committees under chapter 19.

(3) PRELIMINARY CANDIDATE LISTS.—

(A) IN GENERAL.—The Trade Representative shall select individuals from the respective lists prepared by the interagency group under paragraph (2)(B)(i) for placement on—

(i) a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2; and

(ii) a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 and special committees under article 1905.

(B) SUBMISSION OF LISTS TO CONGRESSIONAL COMMITTEES.—

(i) IN GENERAL.—No later than January 3 of each calendar year, the Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the ''appropriate Congressional Committees'') the preliminary candidate lists of those individuals selected by the Trade Representative under subparagraph (A) to be candidates eligible

to serve on panels or committees convened pursuant to chapter 19 during the 1-year period beginning on April 1 of such calendar year.

(ii) ADDITIONAL INFORMATION.—At the time the candidate lists are submitted under clause (i), the Trade Representative shall submit for each individual on the list a statement of professional qualifications.

(C) CONSULTATION.—Upon submission of the preliminary candidate lists under subparagraph (B) to the appropriate Congressional Committees, the Trade Representative shall consult with such Committees with regard to the individuals included on the preliminary candidate lists.

(D) REVISION OF LISTS.—The Trade Representative may add and delete individuals from the preliminary candidate lists submitted under subparagraph (B) after consultation with the appropriate Congressional Committees regarding the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the

preliminary candidate lists, along with the information described in subparagraph (B)(ii) with respect to any proposed addition.

(4) FINAL CANDIDATE LISTS.—

(A) SUBMISSION OF LISTS TO CONGRESSIONAL COMMITTEES.—No later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on panels and committees convened under chapter 19 during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if such individual was included in the preliminary candidate list or if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to such Committees under this subparagraph.

(B) FINALITY OF LISTS.—Except as provided in subparagraph (C), no additions may be made to the final candidate lists after the final

candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

(C) AMENDMENT OF LISTS.—

(i) IN GENERAL.—If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under subparagraph (A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

(I) request the interagency group established under paragraph (2)(A) to prepare a list of individuals who are qualified to be added to such candidate list;

(II) select individuals from the list prepared by the interagency group under paragraph (2)(B)(ii) to be included in a proposed amendment to such final candidate list; and

(III) by no later than July 1 of such calendar year, submit to the ap-

propriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under subclause (II), along with the information described in paragraph (3)(B)(ii).

(ii) CONSULTATION WITH CONGRESSIONAL COMMITTEES.—Upon submission of a proposed amendment under clause (i)(III) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(iii) ADJUSTMENT OF PROPOSED AMENDMENT.—The Trade Representative may add and delete individuals from any proposed amendment submitted under clause (i)(III) after consulting with the appropriate Congressional Committees with regard to the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion

of an individual from the proposed amendment.

(iv) FINAL AMENDMENT.—

(I) IN GENERAL.—If the Trade Representative submits under clause (i)(III) in any calendar year a proposed amendment to a final candidate list, the Trade Representative shall, no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and, subject to subclause (II), the individuals included in the final form of such amendment shall be added to the final candidate list.

(II) INCLUSION OF INDIVIDUALS.—An individual may be included in the final form of an amendment submitted under subclause (I) only if such individual was included in the proposed form of such amendment or if written notice of the addition of

such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted to such Committees under subclause (I).

(III) ELIGIBILITY FOR SERVICE.—Individuals added to a final candidate list under subclause (I) shall be eligible to serve on panels or committees convened under chapter 19 during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.

(IV) FINALITY OF AMENDMENT.—No additions may be made to the final form of an amendment described in subclause (I) after the final form of such amendment is submitted to the appropriate Congressional Committees under subclause (I).

(5) TREATMENT OF RESPONSES.—For purposes of applying section 1001 of title 18, United States Code, the written or oral responses of individuals to

inquiries of the interagency group established under paragraph (2)(A) or of the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subsection (a)(1), shall be treated as matters within the jurisdiction of an agency of the United States.

(d) SELECTION AND APPOINTMENT.—

(1) AUTHORITY OF TRADE REPRESENTATIVE.—The Trade Representative is the only officer of the United States Government authorized to act on behalf of the United States Government in making any selection or appointment of an individual to—

(A) the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(B) the panels or committees convened under chapter 19;

that is to be made solely or jointly by the United States Government under the terms of the Agreement.

(2) RESTRICTIONS ON SELECTION AND APPOINTMENT.—Except as provided in paragraph (3)—

(A) the Trade Representative may—

(i) select an individual for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 1-year period beginning on April 1 of any calendar year;

(ii) appoint an individual to serve as one of those members of any panel or committee convened under chapter 19 during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the United States Government; or

(iii) act to make a joint appointment with the Government of a NAFTA country, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee;

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under subsection (c)(4)(A) during such calendar year or on such list as it may be amended under subsection (c)(4)(C)(iv)(I), or on the list submitted under subsection (b)(3) to the congres-

sional committees referred to in such subsection; and

(B) no individual may—

(i) be selected by the United States Government for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(ii) be appointed solely or jointly by the United States Government to serve as a member of a panel or committee convened under chapter 19;

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of subsection (a), and of subsection (b) or (c) (as the case may be).

(3) EXCEPTIONS.—Notwithstanding subsection (c)(3) (other than subparagraph (B)), (c)(4), or paragraph (2)(A) of this subsection, individuals included on the preliminary candidate lists submitted to the appropriate Congressional Committees under subsection (c)(3)(B) may—

(A) be selected by the Trade Representative for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1

of Annex 1904.13 during the 3-month period beginning on the date on which the Agreement enters into force with respect to the United States; and

(B) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of panels or committees that are convened under chapter 19 during such 3-month period.

(e) TRANSITION.—If the Agreement enters into force between the United States and a NAFTA country after January 3, 1994, the provisions of subsection (c) shall be applied with respect to the calendar year in which such entering into force occurs—

(1) by substituting ''the date that is 30 days after the date on which the Agreement enters into force with respect to the United States'' for ''January 3 of each calendar year'' in subsections (c)(2)(B)(i) and (c)(3)(B)(i); and

(2) by substituting ''the date that is 3 months after the date on which the Agreement enters into force with respect to the United States'' for ''March 31 of each calendar year'' in subsection (c)(4)(A).

(f) IMMUNITY.—With the exception of acts described in section 777(f)(3) of the Tariff Act of 1930 (19 U.S.C.

1677f(f)(3)), individuals serving on panels or committees convened pursuant to chapter 19, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(g) REGULATIONS.—The administering authority under title VII of the Tariff Act of 1930, the International Trade Commission, and the Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapter 19. Initial regulations to carry out such functions shall be issued before the date on which the Agreement enters into force with respect to the United States.

(h) REPORT TO CONGRESS.—At such time as the final candidate lists are submitted under subsection (c)(4)(A) and the final forms of amendments are submitted under subsection (c)(4)(C)(iv), the Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives, and to the Committee on Finance and the Committee on the Judiciary of the Senate, a report re-

garding the efforts made to secure the participation of judges and former judges on binational panels, extraordinary challenge committees, and special committees established under chapter 19.

**SEC. 403. TESTIMONY AND PRODUCTION OF PAPERS IN EXTRAORDINARY CHALLENGES.**

(a) AUTHORITY OF EXTRAORDINARY CHALLENGE COMMITTEE TO OBTAIN INFORMATION.—If an extraordinary challenge committee (hereafter in this section referred to as the ''committee'') is convened under paragraph 13 of article 1904, and the allegations before the committee include a matter referred to in paragraph 13(a)(i) of article 1904, for the purposes of carrying out its functions and duties under Annex 1904.13, the committee—

(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity;

(2) may summon witnesses, take testimony, and administer oaths;

(3) may require any individual, partnership, corporation, association, organization, or other entity

to produce documents, books, or records relating to the matter in question; and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) WITNESSES AND EVIDENCE.—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a), the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, associa-

tion, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) MANDAMUS.—Any court referred to in subsection (b) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) DEPOSITIONS.—The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization, or other entity may be compelled to appear and be deposed and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

**SEC. 404. REQUESTS FOR REVIEW OF DETERMINATIONS BY COMPETENT INVESTIGATING AUTHORITIES OF NAFTA COUNTRIES.**

(a) DEFINITIONS.—As used in this section:

(1) COMPETENT INVESTIGATING AUTHORITY.—The term ''competent investigating authority'' means the competent investigating authority, as defined in article 1911, of a NAFTA country.

(2) UNITED STATES SECRETARY.—The term ''United States Secretary'' means that officer of the United States referred to in article 1908.

(b) REQUESTS FOR REVIEW BY THE UNITED STATES.—In the case of a final determination of a competent investigating authority, requests by the United States for binational panel review of such determination under article 1904 shall be made by the United States Secretary.

(c) REQUESTS FOR REVIEW BY A PERSON.—In the case of a final determination of a competent investigating authority, a person, within the meaning of paragraph 5 of article 1904, may request a binational panel review of such determination by filing such a request with the United States Secretary within the time limit provided for in paragraph 4 of article 1904. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of

article 1904. The request for such panel review shall be without prejudice to any challenge before a binational panel of the basis for a particular request for review.

(d) SERVICE OF REQUEST FOR REVIEW.—Whenever binational panel review of a final determination made by a competent investigating authority is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled under the law of the importing country to commence proceedings for judicial review of the determination.

**SEC. 405. RULES OF PROCEDURE FOR PANELS AND COMMITTEES.**

(a) RULES OF PROCEDURE FOR BINATIONAL PANELS.—The administering authority shall prescribe rules, negotiated in accordance with paragraph 14 of article 1904, governing, with respect to binational panel reviews—

(1) requests for such reviews, complaints, other pleadings, and other papers;

(2) the amendment, filing, and service of such pleadings and papers;

(3) the joinder, suspension, and termination of such reviews; and

(4) other appropriate procedural matters.

(b) RULES OF PROCEDURE FOR EXTRAORDINARY CHALLENGE COMMITTEES.—The administering authority shall prescribe rules, negotiated in accordance with paragraph 2 of Annex 1904.13, governing the procedures for reviews by extraordinary challenge committees.

(c) RULES OF PROCEDURE FOR SAFEGUARDING THE PANEL REVIEW SYSTEM.—The administering authority shall prescribe rules, negotiated in accordance with Annex 1905.6, governing the procedures for special committees described in such Annex.

(d) PUBLICATION OF RULES.—The rules prescribed under subsections (a), (b), and (c) shall be published in the Federal Register.

(e) ADMINISTERING AUTHORITY.—As used in this section, the term ''administering authority'' has the meaning given such term in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1)).

**SEC. 406. SUBSIDY NEGOTIATIONS.**

In the case of any trade agreement which may be entered into by the President with a NAFTA country, the negotiating objectives of the United States with respect to subsidies shall include—

(1) achievement of increased discipline on domestic subsidies provided by a foreign government, including—

(A) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;

(B) the provision of goods or services at preferential rates;

(C) the granting of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and

(D) the assumption of any costs or expenses of manufacture, production, or distribution;

(2) achievement of increased discipline on export subsidies provided by a foreign government, particularly with respect to agricultural products; and

(3) maintenance of effective remedies against subsidized imports, including, where appropriate, countervailing duties.

**SEC. 407. IDENTIFICATION OF INDUSTRIES FACING SUBSIDIZED IMPORTS.**

(a) PETITIONS.—Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe—

(1) that—

(A) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized imports, from a NAFTA country, with which it directly competes; or

(B) the industry is likely to face increased competition from subsidized imports with which it directly competes from any other country designated by the President, following consultations with the Congress, as benefiting from a reduction of tariffs or other trade barriers under a trade agreement that enters into force with respect to the United States after January 1, 1994; and

(2) that the industry is likely to experience a deterioration of its competitive position before more effective rules and disciplines relating to the use of government subsidies have been developed with respect to the country concerned;

may file with the Trade Representative a petition that such industry be identified under this section.

(b) IDENTIFICATION OF INDUSTRY.—Within 90 days after receipt of a petition under subsection (a), the Trade Representative, in consultation with the Secretary of Commerce, shall decide whether to identify the industry on the

basis that there is a reasonable likelihood that the industry may face both the subsidization described in subsection (a)(1) and the deterioration described in subsection (a)(2).

(c) ACTION AFTER IDENTIFICATION.—At the request of an entity that is representative of an industry identified under subsection (b), the Trade Representative shall—

(1) compile and make available to the industry information under section 308 of the Trade Act of 1974;

(2) recommend to the President that an investigation by the International Trade Commission be requested under section 332 of the Tariff Act of 1930; or

(3) take actions described in both paragraphs (1) and (2).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under paragraph (1) or (2), or both, as the case may be, until an agreement on more effective rules and disciplines relating to government subsidies is reached between the United States and the NAFTA countries.

(d) INITIATION OF ACTION UNDER OTHER LAW.—

(1) IN GENERAL.—The Trade Representative and the Secretary of Commerce shall review infor-

mation obtained under subsection (c) and consult with the industry identified under subsection (b) with a view to deciding whether any action is appropriate—

(A) under section 301 of the Trade Act of 1974, including the initiation of an investigation under section 302(c) of that Act (in the case of the Trade Representative); or

(B) under subtitle A of title VII of the Tariff Act of 1930, including the initiation of an investigation under section 702(a) of that Act (in the case of the Secretary of Commerce).

(2) CRITERIA FOR INITIATION.—In determining whether to initiate any investigation under section 301 of the Trade Act of 1974 or any other trade law, other than title VII of the Tariff Act of 1930, the Trade Representative, after consultation with the Secretary of Commerce—

(A) shall seek the advice of the advisory committees established under section 135 of the Trade Act of 1974;

(B) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(C) shall coordinate with the interagency organization established under section 242 of the Trade Expansion Act of 1962; and

(D) may ask the President to request advice from the International Trade Commission.

(3) TITLE III ACTIONS.—In the event an investigation is initiated under section 302(c) of the Trade Act of 1974 as a result of a review under this subsection and the Trade Representative, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement), determines to take action under section 301(a) of such Act, the Trade Representative shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the investigation, unless there are no significant imports of such products or the Trade Representative otherwise determines that application of the action to other products would be more effective.

(e) EFFECT OF DECISIONS.—Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way—

(1) prejudice the right of any industry to file a petition under any trade law;

(2) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the International Trade Commission, or the Trade Representative pursuant to such a petition, or

(3) prejudice, affect, substitute for, or obviate any proceeding, investigation, or determination under section 301 of the Trade Act of 1974, title VII of the Tariff Act of 1930, or any other trade law.

(f) STANDING.—Nothing in this section may be construed to alter in any manner the requirements in effect before the date of the enactment of this Act for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

**SEC. 408. TREATMENT OF AMENDMENTS TO ANTIDUMPING AND COUNTERVAILING DUTY LAW.**

Any amendment enacted after the Agreement enters into force with respect to the United States that is made to—

(1) section 303 or title VII of the Tariff Act of 1930, or any successor statute, or

(2) any other statute which—

(A) provides for judicial review of final determinations under such section, title, or successor statute, or

(B) indicates the standard of review to be applied,

shall apply to goods from a NAFTA country only to the extent specified in the amendment.

# Subtitle B—Conforming Amendments and Provisions

## SEC. 411. JUDICIAL REVIEW IN ANTIDUMPING DUTY AND COUNTERVAILING DUTY CASES.

Section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a) is amended as follows:

(1) Subsection (a)(5) (relating to time limits for commencing review) is amended to read as follows:

''(5) TIME LIMITS IN CASES INVOLVING MERCHANDISE FROM FREE TRADE AREA COUNTRIES.—Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

''(A) For a determination described in paragraph (1)(B) or clause (i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

''(B) For a determination described in clause (vi) of paragraph (2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.

''(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8), the day after the date as of which—

''(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and

''(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this subsection has provided timely notice under subsection (g)(3)(B).

If such an interested party files a summons and complaint under this subsection after dismissal by the binational panel, and if a request for an

extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss—

''(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and

''(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel decision to dismiss.

''(D) For a determination for which review by the United States Court of International Trade is provided for—

''(i) under subsection (g)(12)(B), the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or

''(ii) under subsection (g)(12)(D), the day after the date that notice of settlement is published in the Federal Register.''.

(2) Subsection (b)(3) (relating to the standards of review) is amended—

(A) by inserting ''NAFTA OR'' after ''DECISIONS BY'' in the heading; and

(B) by inserting ''of the NAFTA or'' after ''article 1904''.

(3) Subsection (f) (relating to definitions) is amended—

(A) by amending paragraphs (6) and (7) to read as follows:

''(6) UNITED STATES SECRETARY.—The term 'United States Secretary' means—

''(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

''(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

''(7) RELEVANT FTA SECRETARY.—The term 'relevant FTA Secretary' means the Secretary—

''(A) referred to in article 1908 of the NAFTA, or

''(B) provided for in paragraph 5 of article 1909 of the Agreement,

of the relevant FTA country.''; and

(B) by adding at the end the following new paragraphs:

''(8) NAFTA.—The term 'NAFTA' means the North American Free Trade Agreement.

''(9) RELEVANT FTA COUNTRY.—The term 'relevant FTA country' means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

''(10) FREE TRADE AREA COUNTRY.—The term 'free trade area country' means the following:

''(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.

''(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.

''(C) Canada for such time as—

''(i) it is not a free trade area country under subparagraph (A); and

''(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.''.

(4) Subsection (g) (relating to review of countervailing and antidumping duty determinations) is amended as follows:

(A) The subsection heading is amended by striking out ''CANADIAN MERCHANDISE'' and inserting ''FREE TRADE AREA COUNTRY MERCHANDISE''.

(B) Paragraph (1) is amended by striking out ''Canadian merchandise'' and inserting ''free trade area country merchandise''.

(C) Paragraph (2) is amended by inserting ''of the NAFTA or'' after ''article 1904''.

(D) Paragraph (3)(A) is amended—

(i) by striking out ''nor Canada'' and inserting ''nor the relevant FTA country'' in each of clauses (i) and (ii);

(ii) by inserting ''of the NAFTA or'' before ''of the Agreement'' in each of clauses (i) and (iii);

(iii) by striking out ''or'' at the end of clause (iii);

(iv) by amending clause (iv)—

(I) by striking out ''under paragraph (2)(A)''; and

(II) by striking out the period and inserting a comma; and

(v) by adding at the end of subparagraph (A) the following:

''(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or

''(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.''.

(E) The first and second sentences of paragraph (3)(B) are amended to read as follows: ''A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to—

''(i) the United States Secretary and the relevant FTA Secretary;

''(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

''(iii) the administering authority or the Commission, as appropriate.

Such notice is timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection,

any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended.''.

(F) Paragraph (4)(A) is amended—

(i) in the first sentence—

(I) by inserting ''the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or'' after ''or amendment made by,'';

(II) by inserting a comma before ''violates'';

(III) by inserting ''only'' after ''may be brought''; and

(IV) by inserting '', which shall have jurisdiction of such action'' after ''Circuit''; and

(ii) by striking the last sentence.

(G) Paragraph (5) is amended—

(i) by inserting ''of the NAFTA or'' after ''article 1904'' in each of subparagraphs (A), (B), and (C)(i);

(ii) by striking out ‘‘, the Canadian Secretary,’’ in subparagraph (C)(ii) and inserting ‘‘, the relevant FTA Secretary,’’; and

(iii) by inserting ‘‘of the NAFTA or’’ after ‘‘chapter 19’’ in subparagraph (C)(iii).

(H) Paragraph (6) is amended by inserting ‘‘of the NAFTA or’’ after ‘‘article 1904’’.

(I) Paragraph (7) is amended—

(i) by inserting ‘‘OF THE NAFTA OR THE AGREEMENT’’ before the period in the paragraph heading;

(ii) by striking out ‘‘IN GENERAL.—’’ in the heading to subparagraph (A) and inserting ‘‘ACTION UPON REMAND.—’’; and

(iii) by inserting ‘‘the NAFTA or’’ before ‘‘the Agreement’’ in subparagraph (A).

(J) Paragraph (8)(A) is amended—

(i) by inserting ‘‘(i) GENERAL RULE.—’’ before ‘‘An interested party’’;

(ii) by inserting ‘‘of the NAFTA or’’ after ‘‘article 1904(4)’’;

(iii) by indenting the text so as to align it with new clause (ii) (as added by clause (iv) of this subparagraph); and

(iv) by adding at the end the following new clause:

''(ii) SUSPENSION OF TIME TO REQUEST BINATIONAL PANEL REVIEW UNDER THE NAFTA.—Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.''.

(K) Paragraph (8)(B)(ii) is amended by striking out ''Canadian Secretary,'' and inserting ''relevant FTA Secretary,''.

(L) Paragraph (8)(C) is amended by striking out ''under article 1904 of the Agreement of a determination'' and inserting ''of a determination under article 1904 of the NAFTA or the Agreement''.

(M) Paragraph (9) is amended by inserting ''of the NAFTA or'' after ''chapter 19''.

(N) Paragraph (10) is amended by striking out ''Government of Canada'' and all that fol-

lows thereafter and inserting ''Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.''.

(O) The following new paragraphs are added at the end:

''(11) SUSPENSION AND TERMINATION OF SUSPENSION OF ARTICLE 1904 OF THE NAFTA.—

''(A) SUSPENSION OF ARTICLE 1904.—If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.

''(B) TERMINATION OF SUSPENSION OF ARTICLE 1904.—If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

''(12) JUDICIAL REVIEW UPON TERMINATION OF BINATIONAL PANEL OR COMMITTEE REVIEW UNDER THE NAFTA.—

"(A) NOTICE OF SUSPENSION OR TERMINATION OF SUSPENSION OF ARTICLE 1904.—

"(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

"(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

"(B) TRANSFER OF FINAL DETERMINATIONS FOR JUDICIAL REVIEW UPON SUSPENSION OF ARTICLE 1904.—If the operation of ar-

ticle 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA—

''(i) upon the request of an authorized person described in subparagraph (C), any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a); or

''(ii) in a case in which—

''(I) a binational panel review was completed fewer than 30 days before the suspension, and

''(II) extraordinary challenge committee review has not been requested,

upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred

to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

''(C) PERSONS AUTHORIZED TO REQUEST TRANSFER OF FINAL DETERMINATIONS FOR JUDICIAL REVIEW.—A request that a final determination be transferred to the Court of International Trade under subparagraph (B) may be made by—

''(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA—

''(I) the government of the relevant country described in subsection (f)(10)(A) or (B),

''(II) an interested party that was a party to the panel or committee review, or

''(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period

for filing notices of appearance in the panel review has not expired, or

''(ii) if a country described in subsection (f)(10)(A) or (B) made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA—

''(I) the government of that country,

''(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

''(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

''(D)(i) TRANSFER FOR JUDICIAL REVIEW UPON SETTLEMENT.—If the Trade Representative achieves a settlement with the government

of a country described in subsection (f)(10)(A) or (B) pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

''(ii) A request referred to in clause (i) is a request made by—

''(I) the country referred to in clause (i),

''(II) an interested party that was a party to the panel or committee review, or

''(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.''.

**SEC. 412. CONFORMING AMENDMENTS TO OTHER PROVISIONS OF THE TARIFF ACT OF 1930.**

(a) REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION; FINALITY AND DECISION.—Sections 502(b) and 514(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b) and 1514(b)) are each amended by inserting ''the North American Free Trade Agreement or'' before ''the United States-Canada Free-Trade Agreement''.

(b) DEFINITION.—Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended—

(1) by redesignating as paragraph (21) (and placing in numerical sequence) the second paragraph that is designated as paragraph (18) (relating to the definition of the United States-Canada Agreement) in such section; and

(2) by inserting after paragraph (21) (as redesignated by paragraph (1) of this subsection) the following new paragraph:

''(22) NAFTA.—The term 'NAFTA' means the North American Free Trade Agreement.''.

(c) DISCLOSURE OF PROPRIETARY INFORMATION IN TITLE VII PROCEEDINGS.—Section 777(f) of the Tariff Act of 1930 (19 U.S.C. 1677f(f)) is amended—

(1) by inserting ''THE NORTH AMERICAN FREE TRADE AGREEMENT OR'' before ''THE UNITED STATES-CANADA AGREEMENT'' in the heading;

(2) by inserting ''the NAFTA or'' before ''the United States-Canada Agreement'' each place it appears in paragraph (1)(A);

(3) in the second sentence of paragraph (1)(A)—

(A) by inserting ''or extraordinary challenge committee'' after ''binational panel''; and

(B) by inserting ''or committee'' after ''the panel'';

(4) in paragraph (1)(B)—

(A) by inserting ''the NAFTA or'' before ''the Agreement'' in clauses (iii) and (iv); and

(B) by striking out ''Government of Canada designated by an authorized agency of Canada'' in clause (iv) and inserting ''Government of a free trade area country (as defined in section 516A(f)(10)) designated by an authorized agency of such country'';

(5) in paragraph (2) by inserting '', including any extraordinary challenge,'' after ''binational panel proceeding'';

(6) in paragraph (3)—

(A) by inserting ''or extraordinary challenge committee'' after ''binational panel'', and

(B) by inserting ''the NAFTA or'' before ''the United States-Canada Agreement'';

(7) by striking out ''agency of Canada'' in each of paragraphs (3) and (4) and inserting ''agency of a free trade area country (as defined in section 516A(f)(10))''; and

(8) in the first sentence of paragraph (4) by inserting '', except a judge appointed to a binational panel or an extraordinary challenge committee under section 402(b) of the North American Free Trade Agreement Implementation Act,'' after ''Any person''.

**SEC. 413. CONSEQUENTIAL AMENDMENT TO FREE-TRADE AGREEMENT ACT OF 1988.**

Section 410(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended by adding at the end the following new sentence: ''In calculating the 7-year period referred to in paragraph (1), any time during which Canada is a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) shall be disregarded.''.

**SEC. 414. CONFORMING AMENDMENTS TO TITLE 28, UNITED STATES CODE.**

(a) COURT OF INTERNATIONAL TRADE.—Chapter 95 of title 28, United States Code, is amended—

(1) in section 1581(i) by inserting ''the North American Free Trade Agreement or'' before ''the United States-Canada Free-Trade Agreement'';

(2) in section 1584—

(A) by amending the section heading to read as follows:

**''§ 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement''**; and

(B) by striking out ''777(d)'' and inserting ''777(f)''; and

(3) in the table of contents for such chapter by amending the entry for section 1584 to read as follows:

''1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.''.

(b) PARTICULAR PROCEEDINGS.—Sections 2201(a) and 2643(c)(5) of title 28, United States Code, are each amended by striking out ''Canadian merchandise,'' and inserting ''merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930),''.

**SEC. 415. EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS.**

(a) IN GENERAL.—Except as provided in subsection (b), on the date on which a country ceases to be a NAFTA country, the provisions of this title (other than this section) and the amendments made by this title shall cease to have effect with respect to that country.

(b) TRANSITION PROVISIONS.—

(1) PROCEEDINGS REGARDING PROTECTIVE ORDERS AND UNDERTAKINGS.—If on the date on which a country ceases to be a NAFTA country an investigation or enforcement proceeding concerning the violation of a protective order issued under section 777(f) of the Tariff Act of 1930 (as amended by this subtitle) or an undertaking of the Government of that country is pending, the investigation or proceeding shall continue, and sanctions may continue to be imposed, in accordance with the provisions of such section 777(f).

(2) BINATIONAL PANEL AND EXTRAORDINARY CHALLENGE COMMITTEE REVIEWS.—If on the date on which a country ceases to be a NAFTA country—

(A) a binational panel review under article 1904 of the Agreement is pending, or has been requested; or

(B) an extraordinary challenge committee review under article 1904 of the Agreement is pending, or has been requested;

with respect to a determination which involves a class or kind of merchandise and to which section 516A(g)(2) of the Tariff Act of 1930 applies, such determination shall be reviewable under section 516A(a) of the Tariff Act of 1930. In the case of a determination to which the provisions of this paragraph apply, the time limits for commencing an action under 516A(a) of the Tariff Act of 1930 shall not begin to run until the date on which the Agreement ceases to be in force with respect to that country.

**SEC. 416. EFFECTIVE DATE.**

The provisions of this title and the amendments made by this title take effect on the date the Agreement enters into force with respect to the United States, but shall not apply—

(1) to any final determination described in paragraph (1)(B), or (2)(B)(i), (ii), or (iii), of section 516A(a) of the Tariff Act of 1930 notice of which is published in the Federal Register before such date, or to a determination described in paragraph (2)(B)(vi) of section 516A(a) of such Act no-

tice of which is received by the Government of Canada or Mexico before such date; or

(2) to any binational panel review under the United States-Canada Free-Trade Agreement, or any extraordinary challenge arising out of any such review, that was commenced before such date.

# TITLE V—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE AND OTHER PROVISIONS

## Subtitle A—NAFTA Transitional Adjustment Assistance Program

**SEC. 501. SHORT TITLE.**

This subtitle may be cited as the ''NAFTA Worker Security Act''.

**SEC. 502. ESTABLISHMENT OF NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM.**

Chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) is amended by adding at the end the following new subchapter:

### "Subchapter D—NAFTA Transitional Adjustment Assistance Program

**"SEC. 250. ESTABLISHMENT OF TRANSITIONAL PROGRAM.**

''(a) GROUP ELIGIBILITY REQUIREMENTS.—

''(1) CRITERIA.—A group of workers (including workers in any agricultural firm or subdivision of an

agricultural firm) shall be certified as eligible to apply for adjustment assistance under this subchapter pursuant to a petition filed under subsection (b) if the Secretary determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and either—

''(A) that—

''(i) the sales or production, or both, of such firm or subdivision have decreased absolutely,

''(ii) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and

''(iii) the increase in imports under clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

''(B) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly

competitive with articles which are produced by the firm or subdivision.

''(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—The term 'contributed importantly', as used in paragraph (1)(A)(iii), means a cause which is important but not necessarily more important than any other cause.

''(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

''(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

''(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this subchapter may be filed by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which such workers' firm or subdivision thereof is located.

"(2) FINDINGS AND ASSISTANCE.—Upon receipt of a petition under paragraph (1), the Governor shall—

"(A) notify the Secretary that the Governor has received the petition;

"(B) within 10 days after receiving the petition—

"(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1) (and for purposes of this clause the criteria described under subparagraph (A)(iii) of such subsection shall be disregarded), and

"(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons therefor, to the Secretary for action under subsection (c); and

"(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

"(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

"(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b), shall determine whether the petition meets the criteria described in subsection (a)(1). Upon a determination that the petition meets such criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for assistance described in subsection (d).

"(2) DENIAL OF CERTIFICATION.—Upon denial of certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of subchapter A to determine if the workers may be certified under such subchapter.

"(d) COMPREHENSIVE ASSISTANCE.—Workers covered by certification issued by the Secretary under subsection (c) shall be provided, in the same manner and to the same extent as workers covered under a certification under subchapter A, the following:

"(1) Employment services described in section 235.

"(2) Training described in section 236, except that notwithstanding the provisions of section 236(a)(2)(A), the total amount of payments for

training under this subchapter for any fiscal year shall not exceed $30,000,000.

''(3) Trade readjustment allowances described in sections 231 through 234, except that—

''(A) the provisions of sections 231(a)(5)(C) and 231(c), authorizing the payment of trade readjustment allowances upon a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of such allowances under this subchapter; and

''(B) notwithstanding the provisions of section 233(b), in order for a worker to qualify for trade readjustment allowances under this subchapter, the worker shall be enrolled in a training program approved by the Secretary under section 236(a) by the later of—

''(i) the last day of the 16th week of such worker's initial unemployment compensation benefit period, or

''(ii) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker.

In cases of extenuating circumstances relating to enrollment in a training program, the Secretary may

extend the time for enrollment for a period not to exceed 30 days .

''(4) Job search allowances described in section 237.

''(5) Relocation allowances described in section 238.

''(e) ADMINISTRATION.—The provisions of subchapter C shall apply to the administration of the program under this subchapter in the same manner and to the same extent as such provisions apply to the administration of the program under subchapters A and B, except that the agreement between the Secretary and the States described in section 239 shall specify the procedures that will be used to carry out the certification process under subsection (c) and the procedures for providing relevant data by the Secretary to assist the States in making preliminary findings under subsection (b).''.

**SEC. 503. CONFORMING AMENDMENTS.**

(a) REFERENCES.—Sections 221(a), 222(a), and 223(a) of the Trade Act of 1974 (19 U.S.C. 2271(a), 2272(a), and 2273(a)) are each amended by striking out ''assistance under this chapter'' and inserting ''assistance under this subchapter''.

(b) BENEFIT INFORMATION.—Section 225(b) of the Trade Act of 1974 (19 U.S.C. 2275(b)) is amended by

inserting ''or subchapter D'' after ''subchapter A'' each place it appears.

(c) NONDUPLICATION OF ASSISTANCE.—Subchapter C of chapter 2 of title II of the Trade Act of 1974 is amended by adding at the end the following new section:

**''SEC. 249A. NONDUPLICATION OF ASSISTANCE.**

''No worker may receive assistance relating to a separation pursuant to certifications under both subchapters A and D of this chapter.''.

(d) JUDICIAL REVIEW.—Section 284(a) of the Trade Act of 1974 (19 U.S.C. 2395(a)) is amended by inserting ''or section 250(c)'' after ''section 223''.

(e) TABLE OF CONTENTS.—The table of contents for chapter 2 of title II of the Trade Act of 1974 is amended—

(1) by inserting after the item relating to section 249 the following new item:

''Sec. 249A. Nonduplication of assistance.'';

and

(2) by adding at the end thereof the following new items:

''SUBCHAPTER D—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

''Sec. 250. Establishment of transitional program.''.

**SEC. 504. AUTHORIZATION OF APPROPRIATIONS.**

Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended—

(1) by striking ''There'' and inserting ''(a) IN GENERAL.—There'',

(2) by inserting '', other than subchapter D'' after ''chapter'', and

(3) by adding at the end the following new subsection:

''(b) SUBCHAPTER D.—There are authorized to be appropriated to the Department of Labor, for each of fiscal years 1994, 1995, 1996, 1997, and 1998, such sums as may be necessary to carry out the purposes of subchapter D of this chapter.''.

**SEC. 505. TERMINATION OF TRANSITION PROGRAM.**

Subsection (c) of section 285 of the Trade Act of 1974 (19 U.S.C. 2271 preceding note) is amended—

(1) by striking ''No'' and inserting ''(1) Except as provided in paragraph (2), no''; and

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

''(2)(A) Except as provided in subparagraph (B), no assistance, vouchers, allowances, or other payments may be provided under subchapter D of chapter 2 after the day that is the earlier of—

''(i) September 30, 1998, or

''(ii) the date on which legislation, establishing a program providing dislocated workers with com-

prehensive assistance substantially similar to the assistance provided by such subchapter D, becomes effective.

''(B) Notwithstanding subparagraph (A), if, on or before the day described in subparagraph (A), a worker—

''(i) is certified as eligible to apply for assistance, under subchapter D of chapter 2; and

''(ii) is otherwise eligible to receive assistance in accordance with section 250,

such worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements of such section.''.

**SEC. 506. EFFECTIVE DATE.**

(a) IN GENERAL.—The amendments made by sections 501, 502, 503, 504, and 505 shall take effect on the date the Agreement enters into force with respect to the United States.

(b) COVERED WORKERS.—

(1) GENERAL RULE.—Except as provided in paragraph (2), no worker shall be certified as eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974 (as added by this subtitle) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurred before such date of entry into force.

(2) REACHBACK.—Notwithstanding paragraph (1), any worker—

(A) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurs—

(i) after the date of the enactment of this Act, and

(ii) before such date of entry into force, and

(B) who would otherwise be eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974,

shall be eligible to receive such assistance in the same manner as if such separation occurred on or after such date of entry into force.

**SEC. 507. TREATMENT OF SELF-EMPLOYMENT ASSISTANCE PROGRAMS.**

(a) GENERAL RULE.—Section 3306 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(t) SELF-EMPLOYMENT ASSISTANCE PROGRAM.—For the purposes of this chapter, the term 'self-employment assistance program' means a program under which—

''(1) individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

''(2) the allowance payable to individuals pursuant to paragraph (1) is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that—

''(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

''(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

''(C) such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation,

as long as such individuals meet the requirements applicable under this subsection;

''(3) individuals may receive the allowance described in paragraph (1) if such individuals—

''(A) are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

''(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation; and

''(C) are participating in self-employment assistance activities which—

''(i) include entrepreneurial training, business counseling, and technical assistance; and

''(ii) are approved by the State agency; and

''(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

''(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals

receiving regular unemployment compensation under the State law at such time;

''(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

''(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 3304(a)(4) of such Code is amended—

(A) in subparagraph (D), by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (E), by striking the semicolon and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t));''.

(2) Section 3306(f) of such Code is amended—

(A) in paragraph (3), by striking ''; and'' and inserting a semicolon;

(B) in paragraph (4), by striking the period and inserting ''; and''; and

(C) by adding at the end the following new paragraph:

''(5) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).''.

(3) Section 303(a)(5) of the Social Security Act (42 U.S.C. 503(a)(5)) is amended by striking ''; and'' and inserting ''*: Provided further,* That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and''.

(c) STATE REPORTS.—Any State operating a self-employment program authorized by the Secretary of Labor under this section shall report annually to the Secretary on the number of individuals who participate in the self-employment assistance program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, compliance with program requirements, and any other relevant aspects of program operations requested by the Secretary.

(d) REPORT TO CONGRESS.—Not later than 4 years after the date of the enactment of this Act, the Secretary of Labor shall submit a report to the Congress with respect to the operation of the program authorized under this section. Such report shall be based on the reports received from the States pursuant to subsection (c) and include such other information as the Secretary of Labor determines is appropriate.

(e) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—The provisions of this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) SUNSET.—The authority provided by this section, and the amendments made by this section, shall terminate 5 years after the date of the enactment of this Act.

## Subtitle B—Provisions Relating to Performance Under the Agreement

### SEC. 511. DISCRIMINATORY TAXES.

It is the sense of the Congress that when a State, province, or other governmental entity of a NAFTA country discriminatorily enforces sales or other taxes so as to afford protection to domestic production or domestic service providers, such enforcement is in violation of the terms

of the Agreement. When such discriminatory enforcement adversely affects United States producers of goods or United States service providers, the Trade Representative should pursue all appropriate remedies to obtain removal of such discriminatory enforcement, including invocation of the provisions of the Agreement.

**SEC. 512. REVIEW OF THE OPERATION AND EFFECTS OF THE AGREEMENT.**

(a) STUDY.—By not later than July 1, 1997, the President shall provide to the Congress a comprehensive study on the operation and effects of the Agreement. The study shall include an assessment of the following factors:

(1) The net effect of the Agreement on the economy of the United States, including with respect to the United States gross national product, employment, balance of trade, and current account balance.

(2) The industries (including agricultural industries) in the United States that have significantly increased exports to Mexico or Canada as a result of the Agreement, or in which imports into the United States from Mexico or Canada have increased significantly as a result of the Agreement, and the extent of any change in the wages, employment, or productivity in each such industry as a result of the Agreement.

(3) The extent to which investment in new or existing production or other operations in the United States has been redirected to Mexico as a result of the Agreement, and the effect on United States employment of such redirection.

(4) The extent of any increase in investment, including foreign direct investment and increased investment by United States investors, in new or existing production or other operations in the United States as a result of the Agreement, and the effect on United States employment of such investment.

(5) The extent to which the Agreement has contributed to—

(A) improvement in real wages and working conditions in Mexico,

(B) effective enforcement of labor and environmental laws in Mexico, and

(C) the reduction or abatement of pollution in the region of the United States-Mexico border.

(b) SCOPE.—In assessing the factors listed in subsection (a), to the extent possible, the study shall distinguish between the consequences of the Agreement and events that likely would have occurred without the Agreement. In addition, the study shall evaluate the effects of

the Agreement relative to aggregate economic changes and, to the extent possible, relative to the effects of other factors, including—

(1) international competition,

(2) reductions in defense spending,

(3) the shift from traditional manufacturing to knowledge and information based economic activity, and

(4) the Federal debt burden.

(c) RECOMMENDATIONS OF THE PRESIDENT.—The study shall include any appropriate recommendations by the President with respect to the operation and effects of the Agreement, including recommendations with respect to the specific factors listed in subsection (a).

(d) RECOMMENDATIONS OF CERTAIN COMMITTEES.—The President shall provide the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and any other committee that has jurisdiction over any provision of United States law that was either enacted or amended by the North American Free Trade Agreement Implementation Act. Each such committee may hold hearings and make recommendations to the President with respect to the operation and effects of the Agreement.

**SEC. 513. ACTIONS AFFECTING UNITED STATES CULTURAL INDUSTRIES.**

Section 182 of the Trade Act of 1974 (19 U.S.C. 2242) is amended by adding at the end the following new subsection:

''(f) SPECIAL RULE FOR ACTIONS AFFECTING UNITED STATES CULTURAL INDUSTRIES.—

''(1) IN GENERAL.—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the Trade Representative shall identify any act, policy, or practice of Canada which—

''(A) affects cultural industries,

''(B) is adopted or expanded after December 17, 1992, and

''(C) is actionable under article 2106 of the North American Free Trade Agreement.

''(2) SPECIAL RULES FOR IDENTIFICATIONS.—For purposes of section 302(b)(2)(A), an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2), unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act,

policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall—

''(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 135, and appropriate officers of the Federal Government, and

''(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b).

''(3) CULTURAL INDUSTRIES.—For purposes of this subsection, the term 'cultural industries' means persons engaged in any of the following activities:

''(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

''(B) The production, distribution, sale, or exhibition of film or video recordings.

''(C) The production, distribution, sale, or exhibition of audio or video music recordings.

''(D) The publication, distribution, or sale of music in print or machine readable form.

''(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.''.

**SEC. 514. REPORT ON IMPACT OF NAFTA ON MOTOR VEHICLE EXPORTS TO MEXICO.**

(a) FINDINGS.—The Congress makes the following findings:

(1) Trade in motor vehicles and motor vehicle parts is one of the most restricted areas of trade between the United States and Mexico.

(2) The elimination of Mexico's restrictive barriers to trade in motor vehicles and motor vehicle parts over a 10-year period under the Agreement should increase substantially United States exports of such products to Mexico.

(3) The Department of Commerce estimates that the Agreement provides the opportunity to increase United States exports of motor vehicles and

motor vehicle parts by $1,000,000,000 during the first year of the Agreement's implementation with the potential for additional increases over the 10-year transition period.

(4) The United States automotive industry has estimated that United States exports of motor vehicles to Mexico should increase to more than 60,000 units during the first year of the Agreement's implementation, which is substantially above the current level of 4,000 units.

(b) TRADE REPRESENTATIVE REPORT.—No later than July 1, 1995, and annually thereafter through 1999, the Trade Representative shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on how effective the provisions of the Agreement are with respect to increasing United States exports of motor vehicles and motor vehicle parts to Mexico. Each report shall identify and determine the following:

(1) The patterns of trade in motor vehicles and motor vehicle parts between the United States and Mexico during the preceding 12-month period.

(2) The level of tariff and nontariff barriers that were in force during the preceding 12-month period.

(3) The amount by which United States exports of motor vehicles and motor vehicle parts to Mexico have increased from the preceding 12-month period as a result of the elimination of Mexican tariff and nontariff barriers under the Agreement.

(4) Whether any such increase in United States exports meets the levels of new export opportunities anticipated under the Agreement.

(5) If the anticipated levels of new United States export opportunities are not reached, what actions the Trade Representative is prepared to take to realize the benefits anticipated under the Agreement, including possible initiation of additional negotiations with Mexico for the purpose of seeking modifications of the Agreement.

**SEC. 515. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE.**

(a) AMENDMENT TO THE CBI.—The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) is amended by inserting after section 218 the following new section:

**"SEC. 219. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE.**

''(a) ESTABLISHMENT.—The Commissioner of Customs, after consultation with appropriate officials in the

State of Texas, is authorized and directed to make grants to an institution (or a consortium of such institutions) to assist such institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (hereafter in this section referred to as the 'Center'). The Commissioner of Customs shall make the first grant not later than December 1, 1994, and the Center shall be established not later than February 1, 1995.

''(b) SCOPE OF THE CENTER.—The Center shall be a year-round program operated by an institution located in the State of Texas (or a consortium of such institutions), the purpose of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine—

''(1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere,

''(2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and

''(3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

''(c) CONSULTATION; SELECTION CRITERIA.—The Commissioner of Customs shall consult with appropriate

officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. In selecting the appropriate institution, the Commissioner of Customs shall give consideration to—

''(1) the institution's ability to carry out the programs and activities described in this section; and

''(2) any resources the institution can provide the Center in addition to Federal funds provided under this program.

''(d) PROGRAMS AND ACTIVITIES.—The Center shall conduct the following activities:

''(1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere, including the impact of the NAFTA on individual economies and the desirability and feasibility of possible accessions to the NAFTA by such countries.

''(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, ag-

riculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population.

''(3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries.

''(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries.

''(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the Center.

''(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center at the University of Miami at Coral Gables.

''(e) DEFINITIONS.—For purposes of this section—

''(1) NAFTA.—The term 'NAFTA' means the North American Free Trade Agreement.

"(2) WESTERN HEMISPHERE COUNTRIES.—The terms 'Western Hemisphere countries', 'countries in the Western Hemisphere', and 'Western Hemisphere' mean Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by section 212), the Commonwealth of Puerto Rico, and the United States Virgin Islands.

"(f) FEES FOR SEMINARS AND PUBLICATIONS.—Notwithstanding any other provision of law, a grant made under this section may provide that the Center may charge a reasonable fee for attendance at seminars and conferences and for copies of publications, studies, reports, and other documents the Center publishes. The Center may waive such fees in any case in which it determines imposing a fee would impose a financial hardship and the purposes of the Center would be served by granting such a waiver.

"(g) DURATION OF GRANT.—The Commissioner of Customs is directed to make grants to any institution or institutions selected as the Center for fiscal years 1994, 1995, 1996, and 1997.

"(h) REPORT.—The Commissioner of Customs shall, no later than July 1, 1994, and annually thereafter for years for which grants are made, submit a written report

to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The first report shall include—

''(1) a statement identifying the institution or institutions selected as the Center,

''(2) the reasons for selecting the institution or institutions as the Center, and

''(3) the plan of such institution or institutions for operating the Center.

Each subsequent report shall include information with respect to the operations of the Center, the collaboration of the Center with, and dissemination of information to, Government policymakers and the business community with respect to the study of Western Hemispheric trade by the Center, and the plan and efforts of the Center to continue operations after grants under this section have expired.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1994, and such sums as may be necessary in the 3 succeeding fiscal years to carry out the purposes of section 219 of the Caribbean Basin Economic Recovery Act (as added by subsection (a)).

**SEC. 516. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this subtitle shall take effect on the

date the Agreement enters into force with respect to the United States.

(b) EXCEPTION.—Section 515 shall take effect on the date of the enactment of this Act.

# Subtitle C—Funding

## PART 1—CUSTOMS USER FEES

### SEC. 521. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) IN GENERAL.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended—

(1) by amending paragraph (5) of subsection (a) to read as follows:

''(5)(A) For fiscal years 1994, 1995, 1996, and 1997, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States, $6.50.

''(B) For fiscal year 1998 and each fiscal year thereafter, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A) of this section), $5.''

(2) by adding at the end of paragraph (1) of subsection (b), the following flush sentence:

''Subparagraph (A) shall not apply to fiscal years 1994, 1995, 1996, and 1997.'',

(3) in subsection (f)—

(A) in paragraph (1), by striking ''except'' and all that follows through the end period and inserting: ''except—

''(A) the portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations, and

''(B) the portion of such fees that is determined by the Secretary to be excess fees under paragraph (5).'',

(B) in paragraph (3)(A), by striking the first parenthetical and inserting ''(other than the fees under subsection (a) (9) and (10) and the excess fees determined by the Secretary under paragraph (5))'',

(C) in paragraph (4), by striking ''under subsection (a)'' and inserting ''under subsection (a) (other than the excess fees determined by the Secretary under paragraph (5))'', and

(D) by adding at the end thereof the following new paragraph:

''(5) At the close of each of fiscal years 1994, 1995, 1996, and 1997, the Secretary of the Treas-

ury shall determine the amount of the fees collected under paragraph (5)(A) of subsection (a) for that fiscal year that exceeds the amount of such fees that would have been collected for such fiscal year if the fees that were in effect on the day before the effective date of this paragraph applied to such fiscal year. The amount of the excess fees determined under the preceding sentence shall be deposited in the Customs User Fee Account and shall be available for reimbursement of inspectional costs (including passenger processing costs) not otherwise reimbursed under this section, and shall be available only to the extent provided in appropriations Acts.'', and

(4) in paragraph (3) of subsection (j), by striking ''September 30, 1998'' and inserting ''September 30, 2003''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the Agreement enters into force with respect to the United States.

## PART 2—INTERNAL REVENUE CODE AMENDMENTS

### SEC. 522. AUTHORITY TO DISCLOSE CERTAIN TAX INFORMATION TO THE UNITED STATES CUSTOMS SERVICE.

(a) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end thereof the following new paragraph:

''(14) DISCLOSURE OF RETURN INFORMATION TO UNITED STATES CUSTOMS SERVICE.—The Secretary may, upon written request from the Commissioner of the United States Customs Service, disclose to officers and employees of the Department of the Treasury such return information with respect to taxes imposed by chapters 1 and 6 as the Secretary may prescribe by regulations, solely for the purpose of, and only to the extent necessary in—

''(A) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 (19 U.S.C. 1509), or

''(B) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.''

(b) CONFORMING AMENDMENTS.—Paragraphs (3)(A) and (4) of section 6103(p) of such Code are each amended by striking ''or (13)'' each place it appears and inserting ''(13), or (14)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date the Agreement enters into force with respect to the United States.

(2) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury or his delegate shall issue temporary regulations to carry out section 6103(l)(14) of the Internal Revenue Code of 1986, as added by this section.

**SEC. 523. USE OF ELECTRONIC FUND TRANSFER SYSTEM FOR COLLECTION OF CERTAIN TAXES.**

(a) GENERAL RULE.—Section 6302 of the Internal Revenue Code of 1986 (relating to mode or time of collection) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) USE OF ELECTRONIC FUND TRANSFER SYSTEM FOR COLLECTION OF CERTAIN TAXES.—

''(1) ESTABLISHMENT OF SYSTEM.—

"(A) IN GENERAL.—The Secretary shall prescribe such regulations as may be necessary for the development and implementation of an electronic fund transfer system which is required to be used for the collection of depository taxes. Such system shall be designed in such manner as may be necessary to ensure that such taxes are credited to the general account of the Treasury on the date on which such taxes would otherwise have been required to be deposited under the Federal tax deposit system.

"(B) EXEMPTIONS.—The regulations prescribed under subparagraph (A) may contain such exemptions as the Secretary may deem appropriate.

"(2) PHASE-IN REQUIREMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the regulations referred to in paragraph (1)—

"(i) shall contain appropriate procedures to assure that an orderly conversion from the Federal tax deposit system to the electronic fund transfer system is accomplished, and

"(ii) may provide for a phase-in of such electronic fund transfer system by classes of taxpayers based on the aggregate undeposited taxes of such taxpayers at the close of specified periods and any other factors the Secretary may deem appropriate.

"(B) PHASE-IN REQUIREMENTS.—The phase-in of the electronic fund transfer system shall be designed in such manner as may be necessary to ensure that—

"(i) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total depository taxes imposed by chapters 21, 22, and 24 shall be collected by means of electronic fund transfer, and

"(ii) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total other depository taxes shall be collected by means of electronic fund transfer.

"(C) APPLICABLE REQUIRED PERCENTAGE.—

''(i) In the case of the depository taxes imposed by chapters 21, 22, and 24, the applicable required percentage is—

''(I) 3 percent for fiscal year 1994,

''(II) 16.9 percent for fiscal year 1995,

''(III) 20.1 percent for fiscal year 1996,

''(IV) 58.3 percent for fiscal years 1997 and 1998, and

''(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.

''(ii) In the case of other depository taxes, the applicable required percentage is—

''(I) 3 percent for fiscal year 1994,

''(II) 20 percent for fiscal year 1995,

''(III) 30 percent for fiscal year 1996,

''(IV) 60 percent for fiscal years 1997 and 1998, and

"(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) DEPOSITORY TAX.—The term 'depository tax' means any tax if the Secretary is authorized to require deposits of such tax.

"(B) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution or other financial intermediary to debit or credit an account.

"(4) COORDINATION WITH OTHER ELECTRONIC FUND TRANSFER REQUIREMENTS.—

"(A) COORDINATION WITH CERTAIN EXCISE TAXES.—In determining whether the requirements of subparagraph (B) of paragraph (2) are met, taxes required to be paid by electronic fund transfer under sections 5061(e) and 5703(b) shall be disregarded.

"(B) ADDITIONAL REQUIREMENT.—Under regulations, any tax required to be paid by electronic fund transfer under section 5061(e) or 5703(b) shall be paid in such a manner as to ensure that the requirements of the second sentence of paragraph (1)(A) of this subsection are satisfied."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date the Agreement enters into force with respect to the United States.

(2) REGULATIONS.—Not later than 210 days after the date of enactment of this Act, the Secretary of the Treasury or his delegate shall prescribe temporary regulations under section 6302(h) of the Internal Revenue Code of 1986 (as added by this section).

# Subtitle D—Implementation of NAFTA Supplemental Agreements

## PART 1—AGREEMENTS RELATING TO LABOR AND ENVIRONMENT

### SEC. 531. AGREEMENT ON LABOR COOPERATION.

(a) COMMISSION FOR LABOR COOPERATION.—

(1) MEMBERSHIP.—The United States is authorized to participate in the Commission for Labor Cooperation in accordance with the North American Agreement on Labor Cooperation.

(2) CONTRIBUTIONS TO BUDGET.—There are authorized to be appropriated to the President (or such agency as the President may designate) $2,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Labor Cooperation pursuant to Article 43 of the North American Agreement on Labor Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) DEFINITIONS.—As used in this section—

(1) the term ''Commission for Labor Cooperation'' means the commission established by Part Three of the North American Agreement on Labor Cooperation; and

(2) the term ''North American Agreement on Labor Cooperation'' means the North American Agreement on Labor Cooperation Between the Gov-

ernment of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).

**SEC. 532. AGREEMENT ON ENVIRONMENTAL COOPERATION.**

(a) COMMISSION FOR ENVIRONMENTAL COOPERATION.—

(1) MEMBERSHIP.—The United States is authorized to participate in the Commission for Environmental Cooperation in accordance with the North American Agreement on Environmental Cooperation.

(2) CONTRIBUTIONS TO BUDGET.—There are authorized to be appropriated to the President (or such agency as the President may designate) $5,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Environmental Cooperation pursuant to Article 43 of the North American Agreement on Environmental Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds au-

thorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) DEFINITIONS.—As used in this section—

(1) the term ''Commission for Environmental Cooperation'' means the commission established by Part Three of the North American Agreement on Environmental Cooperation; and

(2) the term ''North American Agreement on Environmental Cooperation'' means the North American Agreement on Environmental Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).

**SEC. 533. AGREEMENT ON BORDER ENVIRONMENT COOPERATION COMMISSION.**

(a) BORDER ENVIRONMENT COOPERATION COMMISSION.—

(1) MEMBERSHIP.—The United States is authorized to participate in the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement.

(2) CONTRIBUTIONS TO THE COMMISSION BUDGET.—There are authorized to be appropriated

to the President (or such agency as the President may designate) $5,000,000 for fiscal year 1994 and each fiscal year thereafter for United States contributions to the budget of the Border Environment Cooperation Commission pursuant to section 7 of Article III of Chapter I of the Border Environment Cooperation Agreement. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) CIVIL ACTIONS INVOLVING THE COMMISSION.—For the purpose of any civil action which may be brought within the United States by or against the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement (including an action brought to enforce an arbitral award against the Commission), the Commission shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States, or its agent appointed for the purpose of accepting service or notice of service, is located. Any such action to which the Commission is a party shall be deemed to arise under the laws of the United States, and the district courts of the United

States (including the courts enumerated in section 460 of title 28, United States Code) shall have original jurisdiction of any such action. When the Commission is a defendant in any action in a State court, it may at any time before trial remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28, United States Code.

(c) DEFINITIONS.—As used in this section—

(1) the term ''Border Environment Cooperation Agreement'' means the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank;

(2) the terms ''Border Environment Cooperation Commission'' and ''Commission'' mean the commission established pursuant to Chapter I of the Border Environment Cooperation Agreement; and

(3) the term ''United States'' means the United States, its territories and possessions, and the Commonwealth of Puerto Rico.

## PART 2—NORTH AMERICAN DEVELOPMENT BANK AND RELATED PROVISIONS

### SEC. 541. NORTH AMERICAN DEVELOPMENT BANK.

(a) ACCEPTANCE OF MEMBERSHIP.—The President is hereby authorized to accept membership for the United States in the North American Development Bank (hereafter in this part referred to as the ''Bank'') provided for in Chapter II of the Border Environment Cooperation Agreement (hereafter in this part referred to as the ''Cooperation Agreement'').

(b) SUBSCRIPTION OF STOCK.—

(1) SUBSCRIPTION AUTHORITY.—

(A) IN GENERAL.—The Secretary of the Treasury may subscribe on behalf of the United States up to 150,000 shares of the capital stock of the Bank.

(B) EFFECTIVENESS OF SUBSCRIPTION.—Except as provided in paragraph (3), any such subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(2) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For payment by the Secretary of the Treasury of the subscription of the United States for shares described in paragraph (1), there are authorized to be appropriated $1,500,000,000

($225,000,000 of which may be used for paid-in capital and $1,275,000,000 of which may be used for callable capital) without fiscal year limitation.

(3) FUNDING; LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS.—

(A) FUNDING.—For fiscal year 1995, the Secretary of the Treasury shall pay to the Bank out of any sums in the Treasury not otherwise appropriated the sum of $56,250,000 for the paid-in portion of the United States share of the capital stock of the Bank, 10 percent of which may be transferred by the Bank to the President pursuant to section 543 to pay for the cost of direct and guaranteed Federal loans.

(B) LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS.—For fiscal year 1995, the Secretary of the Treasury shall subscribe to the callable capital portion of the United States share of the capital stock of the Bank in an amount not to exceed $318,750,000.

(4) DISPOSITION OF NET INCOME DISTRIBUTED BY THE FACILITY.—Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

(c) COMPENSATION OF BOARD MEMBERS.—No person shall be entitled to receive any salary or other compensation from the Bank or the United States for services as a Board member.

(d) APPLICABILITY OF BRETTON WOODS AGREEMENTS ACT.—The provisions of section 4 of the Bretton Woods Agreements Act shall apply with respect to the Bank to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund.

(e) RESTRICTIONS.—Unless authorized by law, neither the President nor any person or agency shall, on behalf of the United States—

(1) subscribe to additional shares of stock of the Bank;

(2) vote for or agree to any amendment of the Cooperation Agreement which increases the obligations of the United States, or which changes the purpose or functions of the Bank; or

(3) make a loan or provide other financing to the Bank.

(f) FEDERAL RESERVE BANKS AS DEPOSITORIES.—Any Federal Reserve bank that is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve Sys-

tem shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

(g) JURISDICTION OF UNITED STATES COURTS AND ENFORCEMENT OF ARBITRAL AWARDS.—For the purpose of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Bank in accordance with the Cooperation Agreement, including an action brought to enforce an arbitral award against the Bank, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agency appointed for the purpose of accepting service or notice of service is located, and any such action to which the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have original jurisdiction of any such action. When the Bank is a defendant in any action in a State court, it may at any time before trial remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28, United States Code.

(h) EXEMPTION FROM SECURITIES LAWS FOR CERTAIN SECURITIES ISSUED BY THE BANK; REPORTS REQUIRED.—

(1) EXEMPTIONS FROM LIMITATIONS AND RESTRICTIONS ON THE POWER OF NATIONAL BANKING ASSOCIATIONS TO DEAL IN AND UNDERWRITE INVESTMENT SECURITIES OF THE BANK.—The seventh sentence of the seventh undesignated paragraph of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), is amended by inserting ''the North American Development Bank,'' after ''Inter-American Development Bank,''.

(2) EXEMPTION FROM SECURITIES LAWS FOR CERTAIN SECURITIES ISSUED BY THE BANK; REPORTS REQUIRED.—Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with the raising of funds for inclusion in the Bank's capital resources as defined in Section 4 of Article II of Chapter II of the Cooperation Agreement, and any securities guaranteed by the Bank as to both the principal and interest to which the commitment in Section 3(d) of Article II of Chapter II of the Cooperation Agreement is expressly applicable, shall be deemed to be exempted securities within the mean-

ing of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c), and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(3) AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION TO SUSPEND EXEMPTION; REPORTS TO THE CONGRESS.—The Securities and Exchange Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the provisions of paragraph (2) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this subsection and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

**SEC. 542. STATUS, IMMUNITIES, AND PRIVILEGES.**

Article VIII of Chapter II of the Cooperation Agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon entry into force of the Cooperation Agreement.

**SEC. 543. COMMUNITY ADJUSTMENT AND INVESTMENT PROGRAM.**

(a) THE PRESIDENT.—(1) The President may enter into an agreement with the Bank that facilitates implementation by the President of a program for community adjustment and investment in support of the Agreement pursuant to chapter II of the Cooperation Agreement (hereafter in this section referred to as the ''community adjustment and investment program'').

(2) The President may receive from the Bank 10 percent of the paid-in capital actually paid to the Bank by the United States for the President to carry out, without further appropriations, through Federal agencies and their loan and loan guarantee programs, the community adjustment and investment program, pursuant to an agreement between the President and the Bank.

(3) The President may select one or more Federal agencies that make loans or guarantees the repayment of loans to assist in carrying out the community adjustment and investment program, and may transfer the funds re-

ceived from the Bank to such agency or agencies for the purpose of assisting in carrying out the community adjustment and investment program.

(4)(A) Each Federal agency selected by the President to assist in carrying out the community adjustment and investment program shall use the funds transferred to it by the President from the Bank to pay for the costs of direct and guaranteed loans, as defined in section 502 of the Congressional Budget Act of 1974, and, as appropriate, other costs associated with such loans, all subject to the restrictions and limitations that apply to such agency's existing loan or loan guarantee program.

(B) Funds transferred to an agency under subparagraph (A) shall be in addition to the amount of funds authorized in any appropriations Act to be expended by that agency for its loan or loan guarantee program.

(5) The President shall—

(A) establish guidelines for the loans and loan guarantees to be made under the community adjustment and investment program;

(B) endorse the grants made by the Bank for the community adjustment and investment program, as provided in Article I, section 1(b), and Article III, section 11(a), of Chapter II of the Cooperation Agreement; and

(C) endorse any loans or guarantees made by the Bank for the community adjustment and investment program, as provided in Article I, section 1(b), and Article III, section 6(a) and (c) of Chapter II of the Cooperation Agreement.

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The President shall establish an advisory committee to be known as the Community Adjustment and Investment Program Advisory Committee (in this section referred to as the ''Advisory Committee'') in accordance with the provisions of the Federal Advisory Committee Act.

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Committee shall consist of 9 members of the public, appointed by the President, who, collectively, represent—

(i) community groups whose constituencies include low-income families;

(ii) any scientific, professional, business, nonprofit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

(iii) for-profit business interests; and

(iv) other appropriate entities with relevant expertise.

(B) REPRESENTATION.—Each of the categories described in clauses (i) through (iv) of subparagraph (A) shall be represented by no fewer than 1 and no more than 3 members of the Advisory Committee.

(3) FUNCTION.—It shall be the function of the Advisory Committee—

(A) to provide advice to the President regarding the implementation of the community adjustment and investment program, including advice on the guidelines to be established by the President for the loans and loan guarantees to be made pursuant to subsection (a)(4), advice on identifying the needs for adjustment assistance and investment in support of the goals and objectives of the Agreement, taking into account economic and geographic considerations, and advice on such other matters as may be requested by the President; and

(B) to review on a regular basis the operation of the community adjustment and investment program and provide the President with the conclusions of its review.

(4) TERMS OF MEMBERS.—

(A) IN GENERAL.—Each member of the Advisory Committee shall serve at the pleasure of the President.

(B) CHAIRPERSON.—The President shall appoint a chairperson from among the members of the Advisory Committee.

(C) MEETINGS.—The Advisory Committee shall meet at least annually and at such other times as requested by the President or the chairperson. A majority of the members of the Advisory Committee shall constitute a quorum.

(D) REIMBURSEMENT FOR EXPENSES.—The members of the Advisory Committee may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with the Federal Advisory Committee Act.

(E) STAFF AND FACILITIES.—The Advisory Committee may utilize the facilities and services of employees of any Federal agency without cost to the Advisory Committee, and any such agency is authorized to provide services as requested by the Committee.

(c) OMBUDSMAN.—The President shall appoint an ombudsman to provide the public with an opportunity to participate in the carrying out of the community adjustment and investment program.

(1) FUNCTION.—It shall be the function of the ombudsman—

(A) to establish procedures for receiving comments from the general public on the operation of the community adjustment and investment program, to receive such comments, and to provide the President with summaries of the public comments; and

(B) to perform an independent inspection and programmatic audit of the operation of the community adjustment and investment program and to provide the President with the conclusions of its investigation and audit.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President, or such agency as the President may designate, $25,000 for fiscal year 1995 and for each fiscal year thereafter, for the costs of the ombudsman.

(d) REPORTING REQUIREMENT.—The President shall submit to the appropriate congressional committees

an annual report on the community adjustment and investment program (if any) that is carried out pursuant to this section. Each report shall state the amount of the loans made or guaranteed during the 12-month period ending on the day before the date of the report.

**SEC. 544. DEFINITION.**

For purposes of this part, the term ''Border Environment Cooperation Agreement'' (referred to in this part as the ''Cooperation Agreement'') means the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank.

# TITLE VI—CUSTOMS MODERNIZATION

**SEC. 601. REFERENCE.**

Whenever in subtitle A, B, or C an amendment or repeal is expressed in terms of an amendment to, or repeal of, a part, section, subsection, or other provision, the reference shall be considered to be made a part, section, subsection, or other provision of the Tariff Act of 1930 (19 U.S.C. 1202 et seq.).

# Subtitle A—Improvements in Customs Enforcement

**SEC. 611. PENALTIES FOR VIOLATIONS OF ARRIVAL, REPORTING, ENTRY, AND CLEARANCE REQUIREMENTS.**

Section 436 (19 U.S.C. 1436) is amended—

(1) by amending subsection (a)—

(A) by striking out ''433'' in paragraph (1) and inserting ''431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)'',

(B) by amending paragraph (2) to read as follows:

''(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 431(e), 433(d), or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) without revealing the facts; or'', and

(C) by amending paragraph (3) to read as follows:

''(3) to fail to make entry or to obtain clearance as required by section 434 or 644 of this Act, section 4197 of the Revised Statutes of the United

States (46 U.S.C. App. 91), or section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509); or''; and

(2) by striking out ''**AND ENTRY**'' in the section heading and inserting ''**ENTRY, AND CLEARANCE**''.

**SEC. 612. FAILURE TO DECLARE.**

Section 497(a) (19 U.S.C. 1497(a)) is amended—

(1) by inserting ''or transmitted'' after ''made'' in paragraph (1)(A); and

(2) by amending paragraph (2)(A) to read as follows:

''(A) if the article is a controlled substance, either $500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and''.

**SEC. 613. CUSTOMS TESTING LABORATORIES; DETENTION OF MERCHANDISE.**

(a) AMENDMENT.—Section 499 (19 U.S.C. 1499) is amended to read as follows:

**''SEC. 499. EXAMINATION OF MERCHANDISE.**

''(a) ENTRY EXAMINATION.—

''(1) IN GENERAL.—Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from cus-

toms custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

''(2) EXAMINATION.—The Customs Service—

''(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;

''(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;

''(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and

''(D) shall inspect a sufficient number of shipments, and shall examine a sufficient num-

ber of entries, to ensure compliance with the laws enforced by the Customs Service.

''(3) UNSPECIFIED ARTICLES.—If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry—

''(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or

''(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.

''(4) DEFICIENCY.—If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.

''(5) INFORMATION REQUIRED FOR RELEASE.—If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the

port of examination. The absence of such information does not limit the authority of the Customs Service to conduct an examination.

''(b) TESTING LABORATORIES.—

''(1) ACCREDITATION OF PRIVATE TESTING LABORATORIES.—The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations—

''(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;

''(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed $100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service—

''(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

''(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

''(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation.

The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 13031(e)(6) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(6)).

''(2) APPEAL OF ADVERSE ACCREDITATION DECISIONS.—A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28, United States Code, in the Court of International Trade

within 60 days after issuance of the decision or order.

''(3) TESTING BY ACCREDITED LABORATORIES.—When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry. Nothing in this subsection shall be construed to limit in any way or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.

''(4) AVAILABILITY OF TESTING PROCEDURE, METHODOLOGIES, AND INFORMATION.—Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

''(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are—

''(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

''(ii) developed by the Customs Service for enforcement purposes.

''(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information reveals information which is—

''(i) proprietary to the holder of a copyright or patent; or

''(ii) developed by the Customs Service for enforcement purposes.

''(5) MISCELLANEOUS PROVISIONS.—For purposes of this subsection—

''(A) any reference to a private laboratory includes a reference to a private gauger; and

''(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the

elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.

''(c) DETENTIONS.—Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

''(1) IN GENERAL.—Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

''(2) NOTICE OF DETENTION.—The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—

''(A) the initiation of the detention;

''(B) the specific reason for the detention;

"(C) the anticipated length of the detention;

"(D) the nature of the tests or inquiries to be conducted; and

"(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

"(3) TESTING RESULTS.—Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

"(4) SEIZURE AND FORFEITURE.—If otherwise provided by law, detained merchandise may be seized and forfeited.

"(5) EFFECT OF FAILURE TO MAKE DETERMINATION.—

''(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 514(a)(4).

''(B) For purposes of section 1581 of title 28, United States Code, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.

''(C) Notwithstanding section 2639 of title 28, United States Code, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.''.

(b) EXISTING LABORATORIES.—Accreditation under section 499(b) of the Tariff Act of 1930 (as added by subsection (a)) is not required for any private laboratory (including any gauger) that was accredited or approved by the Customs Service as of the day before the date of the enactment of this Act; but any such laboratory is subject to reaccreditation under the provisions of such section and the regulations promulgated thereunder.

**SEC. 614. RECORDKEEPING.**

Section 508 (19 U.S.C. 1508) is amended—

(1) by amending subsection (a) to read as follows:

''(a) REQUIREMENTS.—Any—

''(1) owner, importer, consignee, importer of record, entry filer, or other party who—

''(A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

''(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

''(2) agent of any party described in paragraph (1); or

''(3) person whose activities require the filing of a declaration or entry, or both;

shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which—

''(A) pertain to any such activity, or to the information contained in the records required by this Act in connection with any such activity; and

''(B) are normally kept in the ordinary course of business.''; and

(2) by amending subsection (c) to read as follows:

''(c) PERIOD OF TIME.—The records required by subsections (a) and (b) shall be kept for such period of time, not to exceed 5 years from the date of entry or exportation, as appropriate, as the Secretary shall prescribe; except that records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.''.

**SEC. 615. EXAMINATION OF BOOKS AND WITNESSES.**

Section 509 (19 U.S.C. 1509) is amended as follows:

(1) Subsection (a) is amended—

(A) by striking out ''and taxes'' wherever it appears and inserting '', fees and taxes'';

(B) by amending paragraph (1) to read as follows:

''(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that—

''(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

''(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g);'';

(C) by amending that part of paragraph (2) that precedes subparagraph (D) to read as follows:

''(2) summon, upon reasonable notice—

''(A) the person who—

''(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

''(ii) exported merchandise, or knowingly caused merchandise to be exported, to Canada,

''(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

''(iv) filed a declaration, entry, or drawback claim with the Customs Service;

''(B) any officer, employee, or agent of any person described in subparagraph (A);

''(C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or''; and

(D) by striking out the comma at the end of subparagraph (D) and inserting a semicolon.

(2) Subsections (b) and (c) are redesignated as subsections (c) and (d), respectively.

(3) The following new subsection is inserted after subsection (a):

''(b) REGULATORY AUDIT PROCEDURES.—

''(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.

''(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.

''(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the appropriate regional commissioner, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

''(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the appropriate regional commissioner provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, United States Code, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

''(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.''.

(4) Subsection (d) (as redesignated by paragraph (2)) is amended—

(A) by striking out ''statements, declarations, or documents'' in paragraph (1)(A) and inserting ''those'';

(B) by inserting '', unless such customhouse broker is the importer of record on an entry'' after ''broker'' in paragraph (1)(C)(i);

(C) by striking out ''import'' in each of paragraphs (2)(B) and (4)(B);

(D) by inserting ''described in section 508'' after ''transactions'' in each of paragraphs (2)(B) and (4)(B); and

(E) by inserting '', fees,'' after ''duties'' in paragraph (4)(A).

(5) The following new subsections are added at the end thereof:

''(e) LIST OF RECORDS AND INFORMATION.—The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A).

''(f) RECORDKEEPING COMPLIANCE PROGRAM.—

''(1) IN GENERAL.—After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 508(a) may participate in after being certified by the Customs

Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

''(2) CERTIFICATION.—A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it—

''(A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;

''(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

''(C) has in place procedures regarding the preparation and maintenance of required

records, and the production of such records to the Customs Service;

''(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;

''(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and

''(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.

''(g) PENALTIES.—

''(1) DEFINITION.—For purposes of this subsection, the term 'information' means any record, statement, declaration, document, or electronically

stored or transmitted information or data referred to in subsection (a)(1)(A).

''(2) EFFECTS OF FAILURE TO COMPLY WITH DEMAND.—Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) the following provisions apply:

''(A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

''(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

''(C) In addition to any penalty imposed under subparagraph (A) or (B) regarding de-

manded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise—

''(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

''(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 514 or 520, at the applicable column 1 general rate of duty;

except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

''(3) AVOIDANCE OF PENALTY.—No penalty may be assessed under this subsection if the person can show—

''(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

"(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

"(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

"(4) PENALTIES NOT EXCLUSIVE.—Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for—

"(A) a penalty imposed under section 592 for a material omission of the demanded information, or

"(B) disciplinary action taken under section 641.

"(5) REMISSION OR MITIGATION.—A penalty imposed under this section may be remitted or mitigated under section 618.

"(6) CUSTOMS SUMMONS.—Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

"(7) ALTERNATIVES TO PENALTIES.—

"(A) IN GENERAL.—When a recordkeeper who—

''(i) has been certified as a participant in the recordkeeping compliance program under subsection (f); and

''(ii) is generally in compliance with the appropriate procedures and requirements of the program;

does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

''(B) CONTENTS OF NOTICE.—A notice of violation issued under subparagraph (A) shall—

''(i) state that the recordkeeper has violated the recordkeeping requirements;

''(ii) indicate the record or information which was demanded; and

''(iii) warn the recordkeeper that future failures to produce demanded records

or information may result in the imposition of monetary penalties.

''(C) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

''(D) REGULATIONS.—The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.''.

**SEC. 616. JUDICIAL ENFORCEMENT.**

The second sentence of section 510(a) (19 U.S.C. 1510(a)) is amended by inserting ''and such court may assess a monetary penalty'' after ''as a contempt thereof''.

**SEC. 617. REVIEW OF PROTESTS.**

Section 515 (19 U.S.C. 1515) is amended by inserting at the end the following new subsections:

"(c) If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28, United States Code. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.

"(d) If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written re-

quest by the protesting party filed with the appropriate district director within 90 days after the date of the protest denial, void the denial of the protest.''.

**SEC. 618. REPEAL OF PROVISION RELATING TO RELIQUIDATION ON ACCOUNT OF FRAUD.**

Section 521 (19 U.S.C. 1521) is repealed.

**SEC. 619. PENALTIES RELATING TO MANIFESTS.**

Section 584 (19 U.S.C. 1584) is amended—

(1) by amending subsection (a)—

(A) by striking out ''appropriate customs officer'' wherever it appears and inserting ''Customs Service'',

(B) by striking out ''officer demanding the same'' in paragraph (1) and inserting ''officer (whether of the Customs Service or the Coast Guard) demanding the same'', and

(C) by inserting ''(electronically or otherwise)'' after ''submission'' in the last sentence of paragraph (1); and

(2) by amending subsection (b)—

(A) by striking out ''the appropriate customs officer'', ''he'' (except in paragraph (1)(F)), and ''such officer'' wherever they appear and inserting ''the Customs Service'',

(B) by striking out ''written'' wherever it appears (other than paragraph (1)(F)),

(C) by inserting ''or electronically transmit'' after ''issue'' wherever it appears, and

(D) by striking out ''his intention'' in the first sentence of paragraph (1) and inserting ''intent''.

**SEC. 620. UNLAWFUL UNLADING OR TRANSSHIPMENT.**

Section 586 (19 U.S.C. 1586) is amended—

(1) by inserting '', or of a hovering vessel which has received or delivered merchandise while outside the territorial sea,'' after ''from a foreign port or place'' wherever it appears; and

(2) by amending subsection (f)—

(A) by striking out ''the appropriate customs officer of the'' and ''the appropriate customs officer within the'' and inserting ''the Customs Service at the''; and

(B) by striking out ''the appropriate customs officer is'' and inserting ''the Customs Service is''.

**SEC. 621. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE; PRIOR DISCLOSURE.**

Section 592 (19 U.S.C. 1592) is amended—

(1) by inserting ''or electronically transmitted data or information'' after ''document'' in subsection (a)(1)(A)(i);

(2) by inserting ''The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.'' at the end of subsection (a)(2);

(3) by amending subsection (b)—

(A) by amending the first sentence of paragraph (1)(A)—

(i) by striking out ''the appropriate customs officer'' and inserting ''the Customs Service'',

(ii) by striking out ''he'' and inserting ''it'', and

(iii) by striking out ''his'' and inserting ''its'', and

(B) by amending paragraph (2)—

(i) by striking out ''the appropriate customs officer'' wherever it appears and inserting ''the Customs Service'',

(ii) by striking out ''such officer'' wherever it appears and inserting ''the Customs Service'', and

(iii) by striking out ''he'' wherever it appears and inserting ''it'';

(4) by amending subsection (c)(4)—

(A) by striking ''time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his'' in subparagraph (A)(i) and by striking out ''time of disclosure in 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his'' in subparagraph (B), and inserting in each place ''time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its''; and

(B) by inserting after the last sentence the following: ''For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a

possibility of a violation of subsection (a) existed.''; and

(5) by amending subsection (d)—

(A) by striking out ''the appropriate customs officer'' and inserting ''the Customs Service'',

(B) by striking out ''duties'' wherever it appears and inserting ''duties, taxes, or fees'', and

(C) by inserting '', TAXES OR FEES'' after ''DUTIES'' in the sideheading.

**SEC. 622. PENALTIES FOR FALSE DRAWBACK CLAIMS.**

(a) AMENDMENT.—Part V of title IV is amended by inserting after section 593 the following new section:

**''SEC. 593A. PENALTIES FOR FALSE DRAWBACK CLAIMS.**

''(a) PROHIBITION.—

''(1) GENERAL RULE.—No person, by fraud, or negligence—

''(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

''(i) any document, written or oral statement, or electronically transmitted

data or information, or act which is material and false, or

''(ii) any omission which is material; or

''(B) may aid or abet any other person to violate subparagraph (A).

''(2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

''(b) PROCEDURES.—

''(1) PREPENALTY NOTICE.—

''(A) IN GENERAL.—If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, the Customs Service shall issue to the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall—

''(i) identify the drawback claim;

''(ii) set forth the details relating to the seeking, inducing, or affecting, or the

attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

''(iii) specify all laws and regulations allegedly violated;

''(iv) disclose all the material facts which establish the alleged violation;

''(v) state whether the alleged violation occurred as a result of fraud or negligence;

''(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

''(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

''(B) EXCEPTIONS.—The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less. In such cases,

the Customs Service may proceed directly with a penalty claim.

''(C) PRIOR APPROVAL.—No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

''(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, the Customs Service shall

provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

''(c) MAXIMUM PENALTIES.—

''(1) FRAUD.—A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

''(2) NEGLIGENCE.—

''(A) IN GENERAL.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

''(B) REPETITIVE VIOLATIONS.—If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive

violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

''(3) PRIOR DISCLOSURE.—

''(A) IN GENERAL.—Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

''(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

''(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1986 on the amount of actual revenue of which the United States is or may be deprived during the period that—

''(I) begins on the date of the overpayment of the claim; and

''(II) ends on the date on which the person concerned tenders the amount of the overpayment.

''(B) CONDITION AFFECTING PENALTY LIMITATIONS.—The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under subsection (c) apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

''(C) BURDEN OF PROOF.—The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

''(4) COMMENCEMENT OF INVESTIGATION.—For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and cir-

cumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

''(5) EXCLUSIVITY.—Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection (a).

''(d) DEPRIVATION OF LAWFUL REVENUE.—Notwithstanding section 514, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a), the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

''(e) DRAWBACK COMPLIANCE PROGRAM.—

''(1) IN GENERAL.—After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

''(2) CERTIFICATION.—A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an al-

ternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

''(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

''(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

''(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

''(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of the Customs Service;

''(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or recordkeeping formats other than the original records; and

''(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

''(f) ALTERNATIVES TO PENALTIES.—

''(1) IN GENERAL.—When a party that—

''(A) has been certified as a participant in the drawback compliance program under subsection (e); and

''(B) is generally in compliance with the appropriate procedures and requirements of the program;

commits a violation of subsection (a), the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issu-

ance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

''(2) CONTENTS OF NOTICE.—A notice of violation issued under paragraph (1) shall—

''(A) state that the party has violated subsection (a);

''(B) explain the nature of the violation; and

''(C) warn the party that future violations of subsection (a) may result in the imposition of monetary penalties.

''(3) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

''(g) REPETITIVE VIOLATIONS.—

''(1) A party who has been issued a written notice under subsection (f)(1) and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

''(A) 2D VIOLATION.—An amount not to exceed 20 percent of the loss of revenue.

"(B) 3RD VIOLATION.—An amount not to exceed 50 percent of the loss of revenue.

"(C) 4TH AND SUBSEQUENT VIOLATIONS.—An amount not to exceed 100 percent of the loss of revenue.

"(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) commits an alleged violation which was not repetitive, the party shall be issued a 'warning letter', and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

"(h) REGULATION.—The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsection (g), a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

"(i) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

"(1) all issues, including the amount of the penalty, shall be tried de novo;

''(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

''(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by the Customs Service. The Customs Service shall publish notice of this date in the Customs Bulletin.

**SEC. 623. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.**

Section 625 (19 U.S.C. 1625) is amended to read as follows:

**"SEC. 625. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.**

''(a) PUBLICATION.—Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review

decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

''(b) APPEALS.—A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.

''(c) MODIFICATION AND REVOCATION.—A proposed interpretive ruling or decision which would—

''(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

''(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, dur-

ing not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

''(d) PUBLICATION OF CUSTOMS DECISIONS THAT LIMIT COURT DECISIONS.—A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

''(e) PUBLIC INFORMATION.—The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5, United States Code.''.

**SEC. 624. SEIZURE AUTHORITY.**

Section 596(c) (19 U.S.C. 1595a(c)) is amended to read as follows:

''(c) Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

''(1) The merchandise shall be seized and forfeited if it—

''(A) is stolen, smuggled, or clandestinely imported or introduced;

''(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law; or

''(C) is a contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781).

''(2) The merchandise may be seized and forfeited if—

''(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;

''(B) its importation or entry requires a license, permit or other authorization of an agen-

cy of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;

''(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 42, 43, or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125, or 1127), section 506 or 509 of title 17, United States Code, or section 2318 or 2320 of title 18, United States Code);

''(D) it is trade dress merchandise involved in the violation of a court order citing section 43 of such Act of July 5, 1946 (15 U.S.C. 1125);

''(E) it is merchandise which is marked intentionally in violation of section 304; or

''(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 304.

''(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar docu-

ment, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 499 unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

''(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification or value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 592.

''(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—

''(A) remit the forfeiture under section 618, or

''(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in con-

travention of a bilateral or multilateral agreement or treaty.''.

# Subtitle B—National Customs Automation Program

**SEC. 631. NATIONAL CUSTOMS AUTOMATION PROGRAM.**

Part I of title IV is amended—

(1) by striking out

**"PART I—DEFINITIONS**

and inserting

**"PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM**

**"Subpart A—Definitions";**

and

(2) by inserting after section 402 the following:

**"Subpart B—National Customs Automation Program**

**"SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.**

''(a) ESTABLISHMENT.—The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the 'Program') which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

''(1) Existing components:

''(A) The electronic entry of merchandise.

''(B) The electronic entry summary of required information.

''(C) The electronic transmission of invoice information.

''(D) The electronic transmission of manifest information.

''(E) Electronic payments of duties, fees, and taxes.

''(F) The electronic status of liquidation and reliquidation.

''(G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

''(2) Planned components:

''(A) The electronic filing and status of protests.

''(B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.

''(C) The electronic filing of import activity summary statements and reconciliation.

''(D) The electronic filing of bonds.

''(E) The electronic penalty process.

''(F) The electronic filing of drawback claims, records, or entries.

''(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

''(b) PARTICIPATION IN PROGRAM.—The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. Participation in the Program is voluntary.

**"SEC. 412. PROGRAM GOALS.**

''The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

''(1) is uniform and consistent;

''(2) is as minimally intrusive upon the normal flow of business activity as practicable; and

''(3) improves compliance.

**"SEC. 413. IMPLEMENTATION AND EVALUATION OF PROGRAM.**

''(a) OVERALL PROGRAM PLAN.—

''(1) IN GENERAL.—Before the 180th day after the date of the enactment of this Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

"(A) a general description of the ultimate configuration of the Program;

"(B) a description of each of the existing components of the Program listed in section 411(a)(1); and

"(C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.

"(2) ADDITIONAL INFORMATION.—In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

"(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and

"(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—

"(i) importers, brokers, and other users of the Program, and

"(ii) Customs Service occupations, operations, processes, and systems.

"(b) IMPLEMENTATION PLAN, TESTING, AND EVALUATION.—

"(1) IMPLEMENTATION PLAN.—For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall—

"(A) develop an implementation plan;

"(B) test the component in order to assess its viability;

"(C) evaluate the component in order to assess its contribution toward achieving the program goals; and

"(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

"(2) IMPLEMENTATION.—

"(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

"(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

"(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

"(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

"(3) EVALUATION AND REPORT.—The Secretary shall—

"(A) develop a user satisfaction survey of parties participating in the Program;

"(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year;

"(C) with respect to the existing Program component listed in section 411(a)(1)(G) transmit to the Committees—

"(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the implementation of the planned Pro-

gram components listed in section 411(a)(2) (B) and (C), and

''(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and

''(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 411(a)(2).

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

''(c) COMMITTEES.—For purposes of this section, the term 'Committees' means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

**"SEC. 414. REMOTE LOCATION FILING.**

''(a) CORE ENTRY INFORMATION.—

''(1) IN GENERAL.—A Program participant may file electronically an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a 'remote location') if—

''(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and

''(B) the participant elects to file from the remote location.

''(2) REQUIREMENTS.—

''(A) IN GENERAL.—In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

''(i) The electronic entry of merchandise.

''(ii) The electronic entry summary of required information.

''(iii) The electronic transmission of invoice information (when required by the Customs Service).

"(iv) The electronic payment of duties, fees, and taxes.

"(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

"(B) RESTRICTION ON EXEMPTION FROM REQUIREMENTS.—The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

"(3) CONDITIONS ON FILING UNDER THIS SECTION.—The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant—

"(i) fails to meet all the compliance requirements and operational standards of remote location filing; or

"(ii) fails to adhere to all applicable laws and regulations.

"(4) ALTERNATIVE FILING.—Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper

documentation for the entry at the designated location referred to in subsection (d).

''(b) ADDITIONAL ENTRY INFORMATION.—

''(1) IN GENERAL.—A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

''(2) REQUIREMENTS.—The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.

''(3) FILING OF ADDITIONAL INFORMATION.—

''(A) IF INFORMATION ELECTRONICALLY ACCEPTABLE.—A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

"(B) ALTERNATIVE FILING.—If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

"(C) APPROPRIATE LOCATION.—For purposes of subparagraph (B), the 'appropriate location' is—

"(i) before January 1, 1999, a designated location; and

"(ii) after December 31, 1998—

"(I) if the paper documentation is required for release, a designated location; or

"(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

"(D) OTHER.—A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

''(c) POST-ENTRY SUMMARY INFORMATION.—A Program participant that is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

''(d) DEFINITIONS.—As used in this section:

''(1) The term 'designated location' means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.

''(2) The term 'Program participant' means, with respect to an entry of merchandise, any party entitled to make the entry under section 484(a)(2)(B).''.

**SEC. 632. DRAWBACK AND REFUNDS.**

(a) AMENDMENTS.—Section 313 (19 U.S.C. 1313) is amended as follows:

(1) Subsection (a) is amended—

(A) by inserting ''or destruction under customs supervision'' after ''Upon the exportation'';

(B) by inserting ''provided that those articles have not been used prior to such expor-

tation or destruction,'' after ''manufactured or produced in the United States with the use of imported merchandise,'';

(C) by inserting ''or destruction'' after ''refunded upon the exportation''; and

(D) by striking out ''wheat imported after ninety days after the date of the enactment of this Act'' and inserting ''imported wheat''.

(2) Subsection (b) is amended—

(A) by striking out ''duty-free or domestic merchandise'' and inserting ''any other merchandise (whether imported or domestic)'';

(B) by inserting '', or destruction under customs supervision,'' after ''there shall be allowed upon the exportation'';

(C) by inserting ''or destroyed'' after ''notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported'';

(D) by inserting '', but only if those articles have not been used prior to such exportation or destruction'' after ''an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported''; and

(E) by inserting ''or destruction under customs supervision'' after ''but the total amount of drawback allowed upon the exportation''.

(3) Subsection (c) is amended to read as follows:

''(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation, or destruction under the supervision of the Customs Service, of merchandise—

''(1) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation;

''(2) upon which the duties have been paid;

''(3) which has been entered or withdrawn for consumption; and

''(4) which, within 3 years after release from the custody of the Customs Service, has been returned to the custody of the Customs Service for exportation or destruction under the supervision of the Customs Service;

the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.''.

(4) Subsection (j) is amended to read as follows:

''(j) UNUSED MERCHANDISE DRAWBACK.—

''(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

''(A) is, before the close of the 3-year period beginning on the date of importation—

''(i) exported, or

''(ii) destroyed under customs supervision; and

''(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.

''(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that—

''(A) is commercially interchangeable with such imported merchandise;

''(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

''(C) before such exportation or destruction—

''(i) is not used within the United States, and

''(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party—

''(I) is the importer of the imported merchandise, or

''(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such trans-

ferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise);

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

''(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

''(A) the imported merchandise itself in cases to which paragraph (1) applies, or

"(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies,

shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).".

(5) Subsection (l) is amended by striking out "the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 309(b) shall be filed and completed," and inserting "the authority for the electronic submission of drawback entries".

(6) Subsection (p) is amended to read as follows:

"(p) SUBSTITUTION OF FINISHED PETROLEUM DERIVATIVES.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, if—

"(A) an article (hereafter referred to in this subsection as the 'exported article') of the same kind and quality as a qualified article is exported;

"(B) the requirements set forth in paragraph (2) are met; and

"(C) a drawback claim is filed regarding the exported article;

the amount of the duties paid on, or attributable to, such qualified article shall be refunded as drawback to the drawback claimant.

''(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are as follows:

''(A) The exporter of the exported article—

''(i) manufactured or produced the qualified article in a quantity equal to or greater than the quantity of the exported article,

''(ii) purchased or exchanged, directly or indirectly, the qualified article from a manufacturer or producer described in subsection (a) or (b) in a quantity equal to or greater than the quantity of the exported article,

''(iii) imported the qualified article in a quantity equal to or greater than the quantity of the exported article, or

''(iv) purchased or exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

''(B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.

''(C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.

''(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.

''(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).

''(F) Except as otherwise specifically provided in this subsection, the drawback claimant

complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.

''(G) The manufacturer, producer, importer, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.

''(3) DEFINITION OF QUALIFIED ARTICLE, ETC.—For purposes of this subsection—

''(A) The term 'qualified article' means an article—

''(i) described in—

''(I) headings 2707, 2708, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902 of the Harmonized Tariff Schedule of the United States, or

''(II) headings 3901 through 3914 of such Schedule (as such headings apply to liquids, pastes, powders, granules, and flakes), and

''(ii) which is—

''(I) manufactured or produced as described in subsection (a) or (b)

from crude petroleum or a petroleum derivative, or

''(II) imported duty-paid.

''(B) An exported article is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article.

''(C) The term 'drawback claimant' means the exporter of the exported article or the refiner, producer, or importer of such article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.

''(4) LIMITATION ON DRAWBACK.—The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article—

''(A) manufactured or produced under subsection (a) or (b) by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

''(B) imported under clause (iii) or (iv) of paragraph (2)(A).''.

(7) The following new subsections are inserted after subsection (p):

''(q) PACKAGING MATERIAL.—Packaging material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j), shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax, or fee imposed under Federal law on the importation of such material.

''(r) FILING DRAWBACK CLAIMS.—

''(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the Customs Service was responsible for the untimely filing.

''(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed

filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

''(s) DESIGNATION OF MERCHANDISE BY SUCCESSOR.—

''(1) For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

''(2) For purposes of subsection (j)(2), a drawback successor may designate—

''(A) imported merchandise which the predecessor, before the date of succession, imported; or

''(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise for which the successor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of deliv-

ery transferring to the successor such merchandise;

as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.

''(3) For purposes of this subsection, the term 'drawback successor' means an entity to which another entity (in this subsection referred to as the 'predecessor') has transferred by written agreement, merger, or corporate resolution—

''(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

''(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

''(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor's records) certifies that—

"(A) the transferred merchandise was not and will not be claimed by the predecessor, and

"(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.

"(t) DRAWBACK CERTIFICATES.—Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued.

"(u) ELIGIBILITY OF ENTERED OR WITHDRAWN MERCHANDISE.—Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

"(v) MULTIPLE DRAWBACK CLAIMS.—Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.".

(b) APPLICATION OF AMENDMENT TO FINISHED PETROLEUM DERIVATIVES.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other pro-

vision of law, the amendment made by paragraph (6) of subsection (a) shall apply to—

(1) claims filed or liquidated on or after January 1, 1988, and

(2) claims that are unliquidated, under protest, or in litigation on the date of the enactment of this Act.

**SEC. 633. EFFECTIVE DATE OF RATES OF DUTY.**

Section 315 (19 U.S.C. 1315) is amended—

(1) by striking out ''appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury,'' in the first sentence of subsection (a) and inserting ''Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe,'';

(2) by striking out ''customs custody'' in the first sentence of subsection (b) and inserting ''custody of the Customs Service''; and

(3) by striking out ''paragraph 813'' in subsection (c) and inserting ''chapter 98 of the Harmonized Tariff Schedule of the United States''.

**SEC. 634. DEFINITIONS.**

Section 401 (19 U.S.C. 1401) is amended—

(1) by amending subsection (k) to read as follows:

''(k) The term 'hovering vessel' means—

''(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws of the United States; and

''(2) any vessel which has visited a vessel described in paragraph (1).''; and

(2) by inserting at the end thereof the following new subsections:

''(n) The term 'electronic transmission' means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

''(o) The term 'electronic entry' means the electronic transmission to the Customs Service of—

''(1) entry information required for the entry of merchandise, and

''(2) entry summary information required for the classification and appraisement of the merchan-

dise, the verification of statistical information, and the determination of compliance with applicable law.

''(p) The term 'electronic data interchange system' means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

''(q) The term 'National Customs Automation Program' means the program established under section 411.

''(r) The term 'import activity summary statement' refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

''(s) The term 'reconciliation' means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time. A reconciliation

is treated as an entry for purposes of liquidation, reliquidation, and protest.''.

**SEC. 635. MANIFESTS.**

Section 431 (19 U.S.C. 1431) is amended—

(1) by amending subsections (a) and (b) to read as follows:

''(a) IN GENERAL.—Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) shall have a manifest that complies with the requirements prescribed under subsection (d).

''(b) PRODUCTION OF MANIFEST.—Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs

Service may take appropriate action against any of the parties.''; and

(2) by inserting after subsection (c) the following new subsection:

''(d) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall by regulation—

''(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);

''(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;

''(C) prescribe the manner of production for, and the delivery for electronic transmittal of, the manifest required by subsection (a); and

''(D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b).

''(2) LETTERS AND DOCUMENTS SHIPMENTS.—For purposes of paragraph (1)(B)—

''(A) the Customs Service may require with respect to letters and documents shipments—

''(i) that they be segregated by country of origin, and

''(ii) additional examination procedures that are not necessary for individually manifested shipments;

''(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

''(C) the term 'letters and documents' means—

''(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

''(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and

''(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.''.

**SEC. 636. INVOICE CONTENTS.**

Section 481 (19 U.S.C. 1481) is amended—

(1) by amending subsection (a)—

(A) by amending the matter preceding paragraph (1) to read as follows: ''IN GENERAL.—All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this section shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:'',

(B) by amending paragraph (3) to read as follows:

''(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;'', and

(C) by amending paragraph (10) to read as follows:

''(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisement, examination and classification of the merchandise.'';

(2) by amending subsection (c) to read as follows:

''(c) IMPORTER PROVISION OF INFORMATION.—Any information required to be set forth on an invoice may alternatively be provided by any of the parties qualifying as an 'importer of record' under section 484(a)(2)(B) by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.''; and

(3) by inserting before the period at the end of subsection (d) the following: ''and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section''.

**SEC. 637. ENTRY OF MERCHANDISE.**

(a) AMENDMENTS TO SECTION 484.—Section 484 (19 U.S.C. 1484) is amended to read as follows:

**"SEC. 484. ENTRY OF MERCHANDISE.**

''(a) REQUIREMENT AND TIME.—

''(1) Except as provided in sections 490, 498, 552, 553, and 336(j), one of the parties qualifying as 'importer of record' under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—

''(A) make entry therefor by filing with the Customs Service—

''(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and

''(ii) notification whether an import activity summary statement will be filed; and

''(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

''(i) properly assess duties on the merchandise,

''(ii) collect accurate statistics with respect to the merchandise, and

''(iii) determine whether any other applicable requirement of law (other than a

requirement relating to release from customs custody) is met.

''(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, covering entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month.

''(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one

of the parties who is eligible to file the documentation or information required by this section.

''(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

''(b) RECONCILIATION.—

''(1) IN GENERAL.—A party that electronically transmits an entry summary or import activity summary statement may at the time of filing such summary or statement notify the Customs Service of his intention to file a reconciliation pursuant to such regulations as the Secretary may prescribe. Such reconciliation must be filed by the importer of record

within such time period as is prescribed by regulation but no later than 15 months following the filing of the entry summary or import activity summary statement; except that the prescribed time period for reconciliation issues relating to the assessment of antidumping and countervailing duties shall require filing no later than 90 days after the Customs Service advises the importer that a period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

''(2) REGULATIONS REGARDING AD/CV DUTIES.—The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.

''(c) RELEASE OF MERCHANDISE.—The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the

delivery of merchandise released from customs custody in accordance with such regulations.

''(d) SIGNING AND CONTENTS.—Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

''(e) PRODUCTION OF INVOICE.—The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

''(f) STATISTICAL ENUMERATION.—The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in

such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

''(g) STATEMENT OF COST OF PRODUCTION.—Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.

''(h) ADMISSIBILITY OF DATA ELECTRONICALLY TRANSMITTED.—Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.''.

(b) AMENDMENT TO SECTION 771.—Section 771 (19 U.S.C. 1677) is amended by adding at the end the following new paragraph:

''(23) ENTRY.—The term 'entry' includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in section 401(s), that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this title, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.''.

**SEC. 638. APPRAISEMENT AND OTHER PROCEDURES.**

Section 500 (19 U.S.C. 1500) is amended—

(1) by striking out ''The appropriate customs officer'' and inserting ''The Customs Service'';

(2) by striking out ''appraise'' in subsection (a) and inserting ''fix the final appraisement of'';

(3) by striking out ''ascertain the'' in subsection (b) and inserting ''fix the final'';

(4) by amending subsection (c)—

(A) by inserting ''final'' after ''fix the'', and

(B) by inserting '', taxes, and fees'' after ''duties'' wherever it appears; and

(5) by amending subsections (d) and (e) to read as follows:

''(d) liquidate the entry and reconciliation, if any, of such merchandise; and

''(e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.''.

**SEC. 639. VOLUNTARY RELIQUIDATIONS.**

Section 501 (19 U.S.C. 1501) is amended—

(1) by striking out ''the appropriate customs officer on his own initiative'' and inserting ''the Customs Service'';

(2) by inserting ''or transmitted'' after ''given'' wherever it appears; and

(3) by amending the section heading to read as follows:

**"SEC. 501. VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS SERVICE.".**

**SEC. 640. APPRAISEMENT REGULATIONS.**

Section 502 (19 U.S.C. 1502) is amended—

(1) by amending subsection (a)—

(A) by inserting ''(including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned)'' after ''law'',

(B) by striking out ''ports of entry, and'' inserting ''ports of entry. The Secretary'',

(C) by inserting ''or classifying'' after ''appraising'' wherever it appears, and

(D) by striking out ''such port'' and inserting ''any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port''; and

(2) by striking out subsection (b) and redesignating subsection (c) as subsection (b).

**SEC. 641. LIMITATION ON LIQUIDATION.**

Section 504 (19 U.S.C. 1504) is amended—

(1) by amending subsection (a)—

(A) by striking out ''Except as provided in subsection (b),'' and inserting ''Unless an entry is extended under subsection (b) or suspended as required by statute or court order,'',

(B) by striking out ''or'' at the end of paragraph (2),

(C) by inserting ''or'' after the semicolon at the end of paragraph (3), and

(D) by inserting the following new paragraph after paragraph (3):

''(4) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed;''; and

(2) by amending subsections (b), (c), and (d) to read as follows:

''(b) EXTENSION.—The Secretary may extend the period in which to liquidate an entry if—

''(1) the information needed for the proper appraisement or classification of the merchandise, or for insuring compliance with applicable law, is not available to the Customs Service; or

''(2) the importer of record requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record and the surety of such importer of record. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquida-

tion of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record at the expiration of 4 years from the applicable date specified in subsection (a).

''(c) NOTICE OF SUSPENSION.—If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record and to any authorized agent and surety of such importer of record.

''(d) REMOVAL OF SUSPENSION.—When a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record.''.

**SEC. 642. PAYMENT OF DUTIES AND FEES.**

(a) AMENDMENT TO SECTION 505.—Section 505 (U.S.C. 1505) is amended to read as follows:

**"SEC. 505. PAYMENT OF DUTIES AND FEES.**

''(a) DEPOSIT OF ESTIMATED DUTIES, FEES, AND INTEREST.—Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.

''(b) COLLECTION OR REFUND OF DUTIES, FEES, AND INTEREST DUE UPON LIQUIDATION OR RELIQUIDATION.—The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess

moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

''(c) INTEREST.—Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation.

''(d) DELINQUENCY.—If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b), any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.''.

(b) CONFORMING AMENDMENT.—Subsection (d) of section 520 (19 U.S.C. 1520(d)) is repealed.

**SEC. 643. ABANDONMENT AND DAMAGE.**

Section 506 (19 U.S.C. 1506) is amended—

(1) by striking out ''the appropriate customs officer'' and ''such customs officer'' wherever they appear and inserting ''the Customs Service'';

(2) by amending paragraph (1)—

(A) by striking out ''not sent to the appraiser's stores for'' and inserting ''released without an'',

(B) by striking out ''of the examination packages or quantities of merchandise'',

(C) by striking out ''the appraiser's stores'' and inserting ''the Customs Service'', and

(D) by inserting ''or entry'' after ''invoice'', and

(3) by amending paragraph (2)—

(A) by inserting '', electronically or otherwise,'' after ''files'', and

(B) by striking out ''written''.

**SEC. 644. CUSTOMS OFFICER'S IMMUNITY.**

Section 513 (19 U.S.C. 1513) is amended to read as follows:

**''SEC. 513. CUSTOMS OFFICER'S IMMUNITY.**

''No customs officer shall be liable in any way to any person for or on account of—

''(1) any ruling or decision regarding the appraisement or the classification of any imported

merchandise or regarding the duties, fees, and taxes charged thereon,

''(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

''(3) any other matter or thing as to which any person might under this Act be entitled to protest or appeal from the decision of such officer.''.

**SEC. 645. PROTESTS.**

Section 514 (19 U.S.C. 1514) is amended—

(1) by amending subsection (a)—

(A) by striking out ''appropriate customs officer'' in the text preceding paragraph (1) and inserting ''Customs Service'',

(B) by inserting ''or reconciliation as to the issues contained therein,'' after ''entry,'' in paragraph (5),

(C) by striking out ''and'' and inserting ''or'' at the end of paragraph (6),

(D) by striking out the comma at the end of paragraph (7) and inserting a semicolon, and

(E) by striking out ''appropriate customs officer, who'' in the text following paragraph (7) and inserting ''Customs Service, which'';

(2) by amending subsection (b) by striking out ''appropriate customs officer'' and inserting ''Customs Service'';

(3) by amending the first sentence of subsection (c)(1) to read as follows: ''A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—

''(A) each decision described in subsection (a) as to which protest is made;

''(B) each category of merchandise affected by each decision set forth under paragraph (1);

''(C) the nature of each objection and the reasons therefor; and

''(D) any other matter required by the Secretary by regulation.'';

(4) by redesignating paragraph (2) of subsection (c) as paragraph (3) and by striking out ''such customs officer'' in such redesignated paragraph and inserting ''the Customs Service'';

(5) by designating the last sentence of paragraph (1) of subsection (c) as paragraph (2);

(6) by striking out ''customs officer'' in subsection (d) and inserting ''Customs Service''; and

(7) by amending the section heading to read as follows:

**''SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.''.**

**SEC. 646. REFUNDS AND ERRORS.**

Section 520 (19 U.S.C. 1520) is amended—

(1) by inserting ''or reconciliation'' after ''entry'' in paragraphs (1) and (4) of subsection (a); and

(2) by amending subsection (c)—

(A) by striking out ''appropriate customs officer'' wherever it appears and inserting ''Customs Service'',

(B) by inserting ''or reconciliation'' after ''reliquidate an entry'', and

(C) by inserting '', whether or not resulting from or contained in electronic transmission,'' after ''inadvertence'' the first place it appears in paragraph (1).

**SEC. 647. BONDS AND OTHER SECURITY.**

Section 623 (19 U.S.C. 1623) is amended—

(1) by inserting ''and the manner in which the bond may be filed with or, pursuant to an author-

ized electronic data interchange system, transmitted to the Customs Service'' after ''form of such bond'' in subsection (b)(1); and

(2) by inserting at the end of subsection (d) the following new sentence: ''Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.''.

**SEC. 648. CUSTOMHOUSE BROKERS.**

Section 641 (19 U.S.C. 1641) is amended—

(1) by adding at the end of subsection (a)(2) the following new sentence: ''It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.'';

(2) by amending subsection (c)(1) to read as follows:

''(1) IN GENERAL.—Each person granted a customs broker's license under subsection (b) shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

''(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

''(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.'';

(3) by inserting at the end of subsection (c) the following new paragraph:

''(4) APPOINTMENT OF SUBAGENTS.—Notwithstanding subsection (c)(1), upon the implementation by the Secretary under section 413(b)(2) of the component of the National Customs Automation Program referred to in section 411(a)(2)(B), a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf

as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.'';

(4) by amending subsection (d)(2)(B)—

(A) by striking out ''appropriate customs officer'' and inserting ''Customs Service'' in the first and third sentences,

(B) by striking out ''he'' and inserting ''it'' in the third sentence,

(C) by striking out ''15 days'' and inserting ''30 days'' in the third sentence,

(D) by striking out ''the appropriate customs officer and the customs broker; they'' and inserting ''the Customs Service and the customs broker; which'' in the sixth sentence,

(E) by striking out ''his'' and inserting ''the'' in the seventh sentence, and

(F) by striking out ''for his decision'' and inserting ''for the decision'' in the eighth sentence; and

(5) by amending subsection (f) by striking out ''United States Customs Service.'' and inserting ''Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.''.

**SEC. 649. CONFORMING AMENDMENTS.**

(a) PLACE OF ENTRY AND UNLADING.—Section 447 (19 U.S.C. 1447) is amended by striking out ''the appropriate customs officer shall consider'' and inserting ''the Customs Service considers''.

(b) UNLADING.—Section 449 (19 U.S.C. 1449) is amended by striking out ''appropriate customs officer of such port issues a permit for the unlading of such merchandise or baggage,'' and inserting ''Customs Service issues a permit for the unlading of such merchandise or baggage at such port,''.

## Subtitle C—Miscellaneous Amendments to the Tariff Act of 1930

**SEC. 651. ADMINISTRATIVE EXEMPTIONS.**

Section 321 (19 U.S.C. 1321) is amended—

(1) by amending subsection (a)(1)—

(A) by striking out ''of less than $10'' and inserting ''of an amount specified by the Secretary by regulation, but not less than $20,'',

(B) by inserting '', fees,'' after ''duties'' wherever it appears, and

(C) by striking out ''and'' at the end thereof;

(2) by amending subsection (a)(2)—

(A) by striking out ''shall not exceed—'' and inserting ''shall not exceed an amount specified by the Secretary by regulation, but not less than—'',

(B) by striking out ''$50'' and ''$100'' in subparagraph (A) and inserting ''$100'' and ''$200'', respectively,

(C) by striking out ''$25'' in subparagraph (B) and inserting ''$200'',

(D) by striking out ''$5'' in subparagraph (C) and inserting ''$200'', and

(E) by striking the period at the end thereof and inserting ''; and'', and

(3) by inserting a new paragraph (3) at the end of subsection (a) to read as follows:

''(3) waive the collection of duties, fees, and taxes due on entered merchandise when such duties, fees, or taxes are less than $20 or such greater amount as may be specified by the Secretary by regulation.''; and

(4) by amending subsection (b)—

(A) by striking out ''to diminish any dollar amount specified in subsection (a) and''; and

(B) by striking out ''such subsection'' wherever it appears and inserting ''subsection (a)''.

**SEC. 652. REPORT OF ARRIVAL.**

Section 433 (19 U.S.C. 1433) is amended—

(1) by amending subsection (a)(1)—

(A) by striking out ''or'' at the end of subparagraph (B),

(B) by inserting ''or'' after the semicolon at the end of subparagraph (C), and

(C) by adding after subparagraph (C) the following:

''(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;'';

(2) by striking out ''present to customs officers such'' in subsection (d) and inserting ''present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,''; and

(3) by amending subsection (e) to read as follows:

''(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—

''(1) depart from the port, place, or airport of arrival; or

''(2) discharge any passenger or merchandise (including baggage).''.

**SEC. 653. ENTRY OF VESSELS.**

Section 434 (19 U.S.C. 1434) amended to read as follows:

**"SEC. 434. ENTRY; VESSELS.**

''(a) FORMAL ENTRY.—Within 24 hours (or such other period of time as may be provided under subsection (c)(2)) after the arrival at any port or place in the United States of—

''(1) any vessel from a foreign port or place;

''(2) any foreign vessel from a domestic port;

''(3) any vessel of the United States having on board bonded merchandise or foreign merchandise for which entry has not been made; or

''(4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

''(b) PRELIMINARY ENTRY.—The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a suffi-

cient number of vessels to ensure compliance with the laws it enforces.

''(c) REGULATIONS.—The Secretary may by regulation—

''(1) prescribe the manner and format in which entry under subsection (a) or subsection (b), or both, must be made, and such regulations may provide that any such entry may be made electronically pursuant to an electronic data interchange system;

''(2) provide that—

''(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

''(B) formal entry may be made before arrival; and

''(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.''.

**SEC. 654. UNLAWFUL RETURN OF FOREIGN VESSEL PAPERS.**

Section 438 (19 U.S.C. 1438) is amended—

(1) by striking out ''section 435'' and inserting ''section 434'';

(2) by inserting ‘‘, or regulations issued thereunder,’’ after ‘‘of this Act’’; and

(3) by striking out ‘‘the appropriate customs officer of the port where such vessel has been entered.’’ and inserting ‘‘the Customs Service in the port in which such vessel has entered.’’.

**SEC. 655. VESSELS NOT REQUIRED TO ENTER.**

Section 441 (19 U.S.C. 1441) is amended—

(1) by amending the text preceding paragraph (1) to read as follows: ‘‘The following vessels shall not be required to make entry under section 434 or to obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91):’’;

(2) by amending paragraph (3) to read as follows:

‘‘(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

‘‘(A) the vessel does not in any way violate the customs or navigation laws of the United States;

‘‘(B) the vessel has not visited any hovering vessel; and

‘‘(C) the master of the vessel, if there is on board any article required by law to be entered, re-

ports the article to the Customs Service immediately upon arrival.'';

(3) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and inserting after paragraph (3) the following:

''(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if—

''(A) the vessel complies with the reporting requirements of section 433, and with the customs and navigation laws of the United States;

''(B) the vessel has not visited any hovering vessel; and

''(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival;'';

(4) by amending paragraph (6) (as so redesignated) by striking out ''enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers'' and inserting ''documented under chapter 121 of title 46, United States Code, with a Great Lakes endorsement''; and

(5) by amending the section heading to read as follows:

**"SEC. 441. EXCEPTIONS TO VESSEL ENTRY AND CLEARANCE REQUIREMENTS.".**

**SEC. 656. UNLADING.**

Section 448(a) (19 U.S.C. 1448(a)) is amended—

(1) by amending the first sentence—

(A) by striking out ''enter)'' and inserting ''enter or clear)'',

(B) by striking out ''or vehicle arriving from a foreign port or place'' and inserting ''required to make entry under section 434, or vehicle required to report arrival under section 433,'',

(C) by inserting ''or transmitted pursuant to an electronic data interchange system'' after ''issued'', and

(D) by striking out the colon after ''officer'' and the proviso and inserting a period;

(2) by amending the second sentence—

(A) by striking out '', preliminary or otherwise,'', and

(B) by inserting '', electronically pursuant to an authorized electronic data interchange

system or otherwise,'' after ''may issue a permit'';

(3) by striking out the last sentence and inserting the following: ''The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 618. Such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490.''; and

(4) by striking out ''the appropriate customs officer'' and ''such customs officer'' wherever they appear and inserting ''the Customs Service''.

**SEC. 657. DECLARATIONS.**

Section 485 (19 U.S.C. 1485) is amended—

(1) by amending subsection (a)—

(A) by inserting ''or transmit electronically'' after ''file'', and

(B) by inserting ''and manner'' after ''form'';

(2) by amending subsection (d)—

(A) by striking out ''A importer'' and inserting ''An importer'', and

(B) by striking out ''a importer'' and inserting ''an importer''; and

(3) by inserting after subsection (f) the following new subsection:

''(g) EXPORTED MERCHANDISE RETURNED AS UNDELIVERABLE.—With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.''.

**SEC. 658. GENERAL ORDERS.**

Section 490 (19 U.S.C. 1490) is amended—

(1) by amending subsection (a) to read as follows:

''(a) INCOMPLETE ENTRY.—

''(1) Whenever—

''(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

''(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

''(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

''(D) the Customs Service believes that any merchandise is not correctly and legally invoiced;

the carrier (unless subject to subsection (c)) shall notify the bonded warehouse of such unentered merchandise.

''(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until—

''(A) entry is made or completed and the proper documents are produced;

''(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

''(C) a bond is given for the production of documents or the transmittal of data.'';

(2) by amending subsection (b)—

(A) by amending the heading for subsection (b) to read as follows:

''(b) REQUEST FOR POSSESSION BY CUSTOMS.—'', and

(B) by striking out ''appropriate customs officer'' and inserting ''Customs Service''; and

(3) by adding at the end the following new subsection:

''(c) GOVERNMENT MERCHANDISE.—Any imported merchandise that—

''(1) is described in any of paragraphs (1) through (4) of subsection (a); and

''(2) is consigned to, or owned by, the United States Government;

shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.''.

**SEC. 659. UNCLAIMED MERCHANDISE.**

Section 491 (19 U.S.C. 1491) is amended—

(1) by amending subsection (a)—

(A) by striking out ''customs custody for one year'' in the first sentence and inserting ''in a bonded warehouse pursuant to section 490 for 6 months'',

(B) by striking out ''public store or bonded warehouse for a period of one year'' in the second sentence and inserting ''pursuant to section 490 in a bonded warehouse for 6 months'',

(C) by striking out ''estimated duties and storage'' in the first sentence and inserting ''estimated duties, taxes, fees, interest, storage,'',

(D) by inserting ''taxes, fees, interest,'' after ''duties,'' wherever it appears, and

(E) by striking out ''duties'' in the last sentence and inserting ''duties, taxes, interest, and fees''; and

(2) by redesignating subsection (b) as subsection (e) and inserting after subsection (a) the following new subsections:

''(b) NOTICE OF TITLE VESTING IN THE UNITED STATES.—At the end of the 6-month period referred to in subsection (a), the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested

parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day—

''(1) the subject merchandise is entered or withdrawn for consumption; and

''(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

''(c) RETENTION, TRANSFER, DESTRUCTION, OR OTHER DISPOSITION.—If title to any merchandise vests in the United States by operation of subsection (b), such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on retained or transferred merchandise shall be paid by the receiving agency.

''(d) PETITION.—Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b), can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b), or can establish

to the satisfaction of the Secretary that the party did not receive notice under subsection (b), the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Treasury of the United States the amount the Secretary believes the party would have received under section 493 had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties.''; and

(3) by amending subsection (e) (as so redesignated) by striking out ''appropriate customs officer'' in paragraph (3) and inserting ''Customs Service''.

**SEC. 660. DESTRUCTION OF MERCHANDISE.**

Section 492 (19 U.S.C. 1492) is amended—

(1) by inserting '', retained for official use, or otherwise disposed of'' after ''destroyed''; and

(2) by striking out ''appropriate customs officer'' and inserting ''Customs Service''.

**SEC. 661. PROCEEDS OF SALE.**

Section 493 (19 U.S.C. 1493) is amended—

(1) by inserting ''taxes, and fees,'' after ''duties,'';

(2) by striking out ''by the appropriate customs officer''; and

(3) by striking out ''such customs officer'' and inserting ''the Customs Service''.

**SEC. 662. ENTRY UNDER REGULATIONS.**

Section 498(a) (19 U.S.C. 1498(a)) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) Merchandise, when—

''(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than $2,500; or

''(B) different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;''; and

(2) by striking out ''$10,000'' in paragraph (2) and inserting ''such amounts as the Secretary may prescribe''.

**SEC. 663. AMERICAN TRADEMARKS.**

Section 526(e)(3) (19 U.S.C. 1526(e)(3)) is amended—

(1) by striking out ''1 year'' and inserting ''90 days''; and

(2) by striking out ''appropriate customs officers'' and inserting ''the Customs Service''.

**SEC. 664. SIMPLIFIED RECORDKEEPING FOR MERCHANDISE TRANSPORTED BY PIPELINE.**

Part IV of title IV is amended by inserting after section 553 the following new section:

**"SEC. 553A. RECORDKEEPING FOR MERCHANDISE TRANSPORTED BY PIPELINE.**

''Merchandise in Customs custody that is transported by pipeline may be accounted for on a quantitative basis, based on the bill of lading, or equivalent document of receipt, issued by the pipeline carrier. Unless the Customs Service has reasonable cause to suspect fraud, the Customs Service may accept the bill of lading, or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee to maintain identity. The shipper, pipeline operator, and consignee shall be subject to the recordkeeping requirements of sections 508 and 509.''.

**SEC. 665. ENTRY FOR WAREHOUSE.**

Section 557(a) (19 U.S.C. 1557(a)) is amended—

(1) by designating the first 2 sentences of such subsection as paragraph (1);

(2) by striking out in such paragraph (1) (as so designated) '': *Provided*, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the

date of importation.'' and inserting the following: ''; except that—

''(A) the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation; and

''(B) turbine fuel may be withdrawn for use under section 309 without the payment of duty if an amount equal to the quantity of fuel withdrawn is shown to be used within 30 days after the day of withdrawal, but duties (together with interest payable from the date of the withdrawal at the rate of interest established under section 6621 of title 26, United States Code) shall be deposited by the 40th day after the day of withdrawal on fuel that was withdrawn in excess of the quantity shown to have been so used during such 30-day period.''; and

(3) by designating the remaining sentences of such subsection as paragraph (2).

**SEC. 666. CARTAGE.**

The first sentence of section 565 (19 U.S.C. 1565) is amended to read as follows: ''The cartage of merchandise entered for warehouse shall be done by—

''(1) cartmen appointed and licensed by the Customs Service; or

''(2) carriers designated under section 551 to carry bonded merchandise;

who shall give bond, in a penal sum to be fixed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted.''.

**SEC. 667. SEIZURE.**

Section 612 (19 U.S.C. 1612) is amended—

(1) by amending subsection (a)—

(A) by striking out ''the appropriate customs officer'', ''such officer'' and ''the customs officer'' wherever they appear and inserting ''the Customs Service'', and

(B) by striking out ''the appraiser's return and his'' and inserting ''its''; and

(2) by amending subsection (b) to read as follows:

''(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.''.

**SEC. 668. LIMITATION ON ACTIONS.**

Section 621 (19 U.S.C. 1621) is amended—

(1) by inserting ''any duty under section 592(d), 593A(d), or'' before ''any pecuniary penalty''; and

(2) by striking out ''discovered:'' and all that follows thereafter and inserting the following: ''discovered; except that—

''(1) in the case of an alleged violation of section 592 or 593A, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

''(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.''.

**SEC. 669. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.**

The Tariff Act of 1930 is amended by inserting after section 528 the following new section:

**"SEC. 529. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.**

''The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government agency for any reason.''.

**SEC. 670. AUTHORITY TO SETTLE CLAIMS.**

The Tariff Act of 1930 is amended by inserting after section 629 the following new section:

**"SEC. 630. AUTHORITY TO SETTLE CLAIMS.**

''(a) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Secretary may settle, for not more than $50,000 in any one case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Customs Service and acting within the scope of his or her employment.

''(b) LIMITATIONS.—The Secretary may not pay a claim under subsection (a) that—

''(1) concerns commercial property;

''(2) is presented to the Secretary more than 1 year after it occurs; or

''(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

''(c) FINAL SETTLEMENT.—A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.''.

**SEC. 671. USE OF PRIVATE COLLECTION AGENCIES.**

The Tariff Act of 1930 is amended by inserting after section 630 the following new section:

**''SEC. 631. USE OF PRIVATE COLLECTION AGENCIES.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.

''(b) CONTRACT REQUIREMENTS.—Any contract entered into under subsection (a) shall provide that—

''(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection

action, and refer a matter to the Attorney General to bring a civil action; and

''(2) the person is subject to—

''(A) section 552a of title 5, United States Code, to the extent provided in subsection (m) of such section; and

''(B) laws and regulations of the United States Government and State governments related to debt collection practices.''.

## Subtitle D—Miscellaneous Provisions and Consequential and Conforming Amendments to Other Laws

### SEC. 681. AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE.

(a) RETURN SHIPMENTS.—General Note 4 of the Harmonized Tariff Schedule of the United States is amended—

(1) by striking out ''and'' at the end of subdivision (c);

(2) by inserting ''and'' after ''1930,'' in subdivision (d);

(3) by inserting after subdivision (d) the following:

''(e) articles exported from the United States which are returned within 45 days after such exportation from the United States as undeliverable and which have not left the custody of the carrier or foreign customs service,''; and

(4) by adding at the end the following new sentence: ''No exportation referred to in subdivision (e) may be treated as satisfying any requirement for exportation in order to receive a benefit from, or meet an obligation to, the United States as a result of such exportation.''.

(b) ENTRY NOT REQUIRED FOR LOCOMOTIVES AND RAILWAY FREIGHT CARS.—

(1) The Notes to chapter 86 of such Schedule are amended by inserting after note 3 the following new note:

''4. Railway locomotives (provided for in headings 8601 and 8602) and railway freight cars (provided for in heading 8606) on which no duty is owed are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.''.

(2) The U.S. Notes to subchapter V of chapter 99 of such Schedule are amended by inserting after note 8 the following new note:

''9. Railway freight cars provided for in subheadings 9905.86.05 and 9905.86.10 are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.''.

(c) INSTRUMENTS OF INTERNATIONAL TRAFFIC.—The U.S. Notes to subchapter III of chapter 98 of such Schedule is amended by inserting after note 3 the following new note:

''4. Instruments of international traffic, such as containers, lift vans, rail cars and locomotives, truck cabs and trailers, etc. are exempt from formal entry procedures but are required to be accounted for when imported and exported into and out of the United States, respectively, through the manifesting procedures required for all international carriers by the United States Customs Service. Fees associated with the importation of such instruments of international traffic shall be reported and paid on a periodic basis as required by regulations issued by the Secretary of the Treasury and in accordance with 1956 Cus-

toms Convention on Containers (20 UST 30; TIAS 6634).''.

**SEC. 682. CUSTOMS PERSONNEL AIRPORT WORK SHIFT REGULATION.**

Section 13031(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(g)) is amended—

(1) by striking out ''In addition to the regulations required under paragraph (2), the'' and inserting ''The'';

(2) by striking out paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

**SEC. 683. USE OF HARBOR MAINTENANCE TRUST FUND AMOUNTS FOR ADMINISTRATIVE EXPENSES.**

(a) IN GENERAL.—Paragraph (3) of section 9505(c) of the Internal Revenue Code of 1986 (relating to expenditures from Harbor Maintenance Trust Fund) is amended to read as follows:

''(3) for the payment of all expenses of administration incurred by the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce related to the administration of subchapter A of chapter 36 (relating to harbor mainte-

nance tax), but not in excess of $5,000,000 for any fiscal year.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to fiscal years beginning after the date of the enactment of this Act.

**SEC. 684. AMENDMENTS TO TITLE 28, UNITED STATES CODE.**

(a) AMENDMENTS RELATING TO ACCREDITATION OF PRIVATE LABORATORIES.—Title 28 of the United States Code is amended as follows:

(1) Section 1581(g) is amended by—

(A) striking out ''and'' at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting ''; and''; and

(C) by adding at the end the following:

''(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.''.

(2) Section 2631(g) is amended by inserting at the end the following new paragraph:

''(3) A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the

Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.''.

(3) Section 2636 is amended—

(A) by redesignating subsection (h) as subsection (i); and

(B) by inserting after subsection (g) the following new subsection:

''(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.''.

(4) Section 2640 is amended—

(A) by redesignating subsection (d) as subsection (e); and

(B) by inserting after subsection (c) the following new subsection:

''(d) In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.''.

(5) Section 2642 is amended by inserting before the period the following: ''or laboratories accredited by the Customs Service under section 499(b) of the Tariff Act of 1930''.

(b) APPLICATION OF SUBSECTION (a) AMENDMENTS.—For purposes of applying the amendments made by subsection (a), any decision or order of the Customs Service denying, suspending, or revoking the accreditation of a private laboratory on or after the date of the enactment of this Act and before regulations to implement section 499(b) of the Tariff Act of 1930 are issued shall be treated as having been denied, suspended, or revoked under such section 499(b).

(c) JURISDICTION OF COURT.—Section 1582(1) of title 28, United States Code, is amended by inserting ''593A,'' after ''592,''.

(d) FILING OF OFFICIAL DOCUMENTS.—Section 2635(a) of title 28, United States Code, is amended to read as follows:

''(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any

document, paper, information or data relating to the entry of merchandise and the administrative determination that is the subject of the protest or petition.''.

**SEC. 685. TREASURY FORFEITURE FUND.**

Section 9703 of title 31, United States Code (as added by Public Law 102–393), is amended—

(1) by redesignating subparagraphs (E), (F), (G), (H), and (I) of subsection (a)(2) as subparagraphs (F), (G), (H), (I), and (J), respectively;

(2) by inserting after subparagraph (D) of subsection (a)(2) the following new subparagraph:

''(E) the payment of claims against employees of the Customs Service settled by the Secretary under section 630 of the Tariff Act of 1930;''; and

(3) by striking out ''shall'' the first place it appears in subsection (e) and inserting ''may''.

**SEC. 686. AMENDMENTS TO THE REVISED STATUTES OF THE UNITED STATES.**

(a) TECHNICAL AMENDMENTS.—The Revised Statutes of the United States are amended as follows:

(1) Section 2793 (19 U.S.C. 288, 46 U.S.C. App. 111, 123) is amended—

(A) by striking out ''Enrolled or licensed vessels engaged in the foreign and coasting

trade on the northern, northeastern, and northwestern frontiers of the United States,'' and inserting ''Documented vessels with a coastwise, Great Lakes endorsement,''; and

(B) by striking out the first semicolon and all the text that follows thereafter and inserting a period.

(2) Section 3126 (19 U.S.C. 293) is amended—

(A) by striking out ''Any vessel, on being duly registered in pursuance of the laws of the United States,'' and inserting ''Any United States documented vessel with a registry or coastwise endorsement, or both'' and

(B) by striking out all the text occurring after the first sentence.

(3) Section 3127 (19 U.S.C. 294) is amended by striking out ''in registered vessels'' and inserting ''a United States documented vessel with a registry or coastwise endorsement, or both,''.

(4) Section 4136 (46 U.S.C. App. 14) is amended by striking out—

(A) ''The Secretary of Commerce may issue a register or enrollment'' and inserting ''The Secretary of Transportation may issue a

certificate of documentation with a coastwise endorsement''; and

(B) ''Secretary of Commerce,'' and inserting ''Secretary of Transportation,''.

(5) Section 4336 (46 U.S.C. App. 277) is amended—

(A) by striking out ''register or enrollment or license of any vessel'' and inserting ''certificate of documentation of any documented vessel''; and

(B) by striking out ''Secretary of the Treasury is not required to have its register or enrollment or license'' and inserting ''Secretary of Transportation is not required to have its certificate of documentation''.

(b) CLEARANCE REQUIREMENTS.—Section 4197 of such Revised Statutes (46 U.S.C. App. 91) is amended to read as follows:

**''SEC. 4197. CLEARANCE; VESSELS.**

''(a) WHEN REQUIRED; VESSELS OF THE UNITED STATES.—Except as otherwise provided by law, any vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—

''(1) for a foreign port or place;

"(2) for another port or place in the United States if the vessel has on board bonded merchandise or foreign merchandise for which entry has not been made; or

"(3) outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.

"(b) WHEN REQUIRED; OTHER VESSELS.—Except as otherwise provided by law, any vessel that is not a vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—

"(1) for a foreign port or place;

"(2) for another port or place in the United States; or

"(3) outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.

"(c) REGULATIONS.—The Secretary of the Treasury may by regulation—

"(1) prescribe the manner in which clearance under this section is to be obtained, including the documents, data or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;

''(2) permit the Customs Service to grant clearance for a vessel under this section before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary of the Treasury conditioned upon the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary of the Treasury; and

''(3) authorize the Customs Service to permit clearance of any vessel to be obtained at a place other than a designated port of entry, under such conditions as he may prescribe.''.

**SEC. 687. AMENDMENTS TO TITLE 18, UNITED STATES CODE.**

Section 965(a) of title 18, United States Code, is amended—

(1) by striking out ''sections 91, 92, and 94 of Title 46'' and inserting ''section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91),'';

(2) by striking out ''the collector of customs for the district wherein such vessel is then located'' and inserting ''the Customs Service''; and

(3) by striking out ''the collector like'' and inserting in lieu thereof ''the Customs Service like''.

**SEC. 688. AMENDMENT TO THE ACT TO PREVENT POLLUTION FROM SHIPS.**

Section 9(e) of the Act to Prevent Pollution from Ships (94 Stat. 2301, 33 U.S.C. 1908(e)) is amended by striking out ''shall refuse or revoke'' and all of the text following thereafter and inserting ''shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.''.

**SEC. 689. MISCELLANEOUS TECHNICAL AMENDMENTS.**

(a) ACT OF OCTOBER 3, 1913.—The Act of October 3, 1913, is amended—

(1) in section IV, J, subsection 1 (19 U.S.C. 128) by striking out ''registered as a vessel of the United States,'' and inserting ''documented under chapter 121 of title 46, United States Code,''; and

(2) in section IV, J, subsection 3 (19 U.S.C. 131)—

(A) by striking out ''vessels of the United States'' and inserting ''United States documented vessels''; and

(B) by striking out ''registered as a vessel of the United States.'' and inserting ''documented under chapter 121 of title 46, United States Code.''.

(b) ACT OF AUGUST 5, 1935.—Section 4 of the Act of August 5, 1935 (19 U.S.C. 1704) is amended—

(1) by striking out ''whenever the collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, licensed, or numbered,'' and inserting ''when the Secretary of Transportation'';

(2) by striking out ''such collector'' and inserting ''the Secretary of Transportation'';

(3) by striking out ''said collector shall revoke the registry, enrollment, license, or number of such vessel'' and inserting ''the Secretary of Transportation shall revoke any endorsement on the vessel's certificate of documentation or number (when the Secretary is the authority issuing the number under chapter 123 of title 46, United States Code)''; and

(4) by striking out ''Such collector and all persons'' and inserting ''The Secretary of Transportation and all persons''.

(c) ACT OF NOVEMBER 6, 1966.—Sections 2(e) and 3(e) of the Act of November 6, 1966 (46 U.S.C. App. 817d(e) and 817e(e)) are each amended—

(1) by striking out ''The collector of customs at'' and inserting ''At''; and

(2) by inserting '', the Customs Service'' after ''subsection (a) of this section''.

**SEC. 690. REPEAL OF OBSOLETE PROVISIONS OF LAW.**

(a) REVISED STATUTES.—The following provisions of the Revised Statutes of the United States are repealed:

(1) So much of section 2792 as is codified at 19 U.S.C. 289 and 46 U.S.C. App. 110 and 112 (as in effect on the date of the enactment of this Act).

(2) Section 3111 (19 U.S.C. 282).

(3) Section 3118 (19 U.S.C. 286).

(4) Section 3119 (19 U.S.C. 287).

(5) Section 3122 (19 U.S.C. 290).

(6) Section 3124 (19 U.S.C. 291).

(7) Section 3125 (19 U.S.C. 292).

(8) Section 4198 (46 U.S.C. App. 94).

(9) Section 4199 (46 U.S.C. App. 93).

(10) Section 4201 (46 U.S.C. App. 96).

(11) Section 4207.

(12) Section 4208 (46 U.S.C. App. 102).

(13) Section 4213 (46 U.S.C. App. 101).

(14) So much of section 4221 as is codified at 46 U.S.C. App. 113 (as in effect on the date of the enactment of this Act).

(15) Section 4222 (46 U.S.C. App. 126).

(16) Sections 4306, 4307, and 4308 (46 U.S.C. App. 351 through 353).

(17) Section 4332 (46 U.S.C. App. 274).

(18) Section 4348 (46 U.S.C. App. 293).

(19) Section 4358 (46 U.S.C. App. 306).

(20) Section 4361 (46 U.S.C. App. 307).

(21) Sections 4362 through 4369 (46 U.S.C. App. 308 through 315).

(22) Sections 4573 through 4576 (46 U.S.C. App. 674 through 677).

(b) TARIFF ACT OF 1930.—The following sections of the Tariff Act of 1930 are repealed:

(1) Section 432 (19 U.S.C. 1432).

(2) Section 435 (19 U.S.C. 1435).

(3) Section 437 (19 U.S.C. 1437).

(4) Section 439 (19 U.S.C. 1439).

(5) Section 440 (19 U.S.C. 1440).

(6) Sections 443, 444, and 445 (19 U.S.C. 1443, 1444, and 1445).

(7) Section 465 (19 U.S.C. 1465).

(8) Section 482 (19 U.S.C. 1482).

(9) Section 583 (19 U.S.C. 1583).

(10) Section 585 (19 U.S.C. 1585).

(c) MISCELLANEOUS PROVISIONS.—The following provisions are repealed:

(1) Section 1 of the Act of February 10, 1900 (46 U.S.C. App. 131).

(2) Section 2 of the Act of April 29, 1908 (46 U.S.C. App. 127).

(3) Section 1 of the Act of July 1, 1916 (46 U.S.C. App. 130).

(4) Sections 1 and 2 of the Act of July 3, 1926 (46 U.S.C. App. 293a and 293b).

(5) The last undesignated paragraph of section 201 of the Act of August 5, 1935 (19 U.S.C. 1432a), is repealed.

(6) The Act of June 16, 1937 (19 U.S.C. 1435b).

(7) The Act of May 4, 1934 (46 U.S.C. App. 91a).

(8) Section 1403(b) of the Water Resources Development Act of 1986 (Public Law 99–662; 26 U.S.C. 4461 note).

**SEC. 691. REPORTS TO CONGRESS.**

(a) ANTIDUMPING AND COUNTERVAILING DUTY COLLECTIONS.—The Commissioner of Customs shall be-

fore the 60th day of each fiscal year after fiscal year 1994 submit to Congress a report regarding the collection during the preceding fiscal year of duties imposed under the antidumping and countervailing duty laws.

(b) CES FEE REPORT.—

(1) AMENDMENT.—Section 9501(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 3 note) is amended by adding at the end the following new paragraph:

''(3) The Commissioner of Customs is authorized to obtain from the operators of centralized cargo examination stations information regarding the fees paid to them for the provision of services at these stations.''.

(2) REPORT.—Within 9 months after the date of the enactment of this subsection, the Commissioner of Customs shall submit to the Committees referred to in section 9501(c) of the Omnibus Budget Reconciliation Act of 1987, a report setting forth—

(A) an estimate of the aggregate amount of fees paid to operators of centralized cargo examination stations during fiscal year 1993; and

(B) the variations, if any, among customs districts with respect to the amounts of the fees charged for centralized cargo examination station services.

(c) COMPLIANCE WITH CUSTOMS LAWS.—Section 123 of the Customs and Trade Act of 1990 (19 U.S.C. 2083) is amended—

(1) by redesignating subsection (d) as subsection (e), and

(2) by inserting after subsection (c) the following:

''(d) COMPLIANCE PROGRAM.—The Commissioner of Customs shall—

''(1) devise and implement a methodology for estimating the level of compliance with the laws administered by the Customs Service; and

''(2) include as an additional part of the report required to be submitted under subsection (a) for each of fiscal years 1994, 1995, and 1996, an evaluation of the extent to which such compliance was obtained during the 12-month period preceding the 60th day before each such fiscal year.''.

(d) COURIER SERVICES COMPLIANCE REPORT.—The Commissioner of Customs shall initiate a compliance review of certain courier services which may not be eligible

for benefits under the regulations of the Customs Service prescribed in part 128 of title 19 of the Code of Federal Regulations and shall submit a report to Congress on the results of such review within 1 year after the date of the enactment of this Act.

**SEC. 692. EFFECTIVE DATE.**

This title takes effect on the date of the enactment of this Act.

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