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STEEL TRADE ENFORCEMENT ACT OF 1999

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Mr. ROTH, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 1254]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 1254) to establish a comprehensive strategy for the elimination of market-distorting practices affecting the global steel industry, and for other purposes, having considered legislation to address the foreign market-distorting practices that have led to a global overcapacity in the steel industry, to modify the safeguard provisions under U.S. trade law to conform them to the international obligations of the United States, to establish an import monitoring program, to instruct U.S. representatives to international financial institutions with respect to financing for steel-making capacity, and to modify the rules governing the suspension of unfair trade actions, reports favorably thereon and refers the bill to the full Senate with a recommendation that the bill do pass.

I. BACKGROUND

The Finance Committee's consideration of the Steel Trade Enforcement Act of 1999 takes place in the context of significant economic challenges facing the U.S. steel industry and its workers.

A. CHALLENGES FACING THE U.S. STEEL INDUSTRY

The current market conditions facing the U.S. steel industry are due to a combination of three factors—global overcapacity in the steel industry, the collapse of foreign demand as a result of the global financial crisis, and the dramatic surge of imports into the

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United States that were sold at subsidized rates or at prices below the producer's cost of production.

1. GLOBAL OVERCAPACITY IN THE STEEL INDUSTRY

The first, and still the most persistent, problem facing the U.S. steel industry is the legacy of over 50 years of state intervention in domestic steel markets abroad that has led to continued overcapacity in the steel industry worldwide. From the 1930s on, state support for "national champions" in certain industries, particularly steel, led to policies designed to support the expansion of steel making capacity regardless of market conditions.

Those policies continued along a spectrum from border measures, like tariffs and quantitative restraints on imports, to heavy government subsidies, through grants and loans at below market rates, to outright state ownership of production capacity. They also included the toleration of private anticompetitive practices and cartel-like behavior in certain markets, and policies designed to foster export-led growth. All these policies inhibited the market-clearing function of supply and demand.

The net result of those policies has been a continuing glut of steel manufacturing capacity in world markets. Despite significant changes in attitudes on state intervention in the market that have taken place in the last 10 years, and despite the privatization of many of the previously state-owned mills, the operation of the market—particularly the capital markets which serve to siphon capital away from loss-making operations—has not eliminated that overhang in capacity. Furthermore, the interventions in the market that led to the global oversupply in the first place are still being practiced by various governments today.

2. GLOBAL FINANCIAL CRISIS AND THE COLLAPSE IN FOREIGN DEMAND

The second factor that has led to the current challenges facing the U.S. steel industry is the collapse of domestic demand in Asia and Russia in response to a global financial crisis that began in Thailand in July, 1997, and filtered through a number of Asian countries before it spread to Russia and Latin America. The crisis occurred after several Asian countries and Russia underwent massive recessions and devalued or depreciated their currencies relative to the U.S. dollar.

The financial crisis that followed led both domestic and foreign investors in those countries to withdraw the capital that had primed the pump of economic growth. The financial crisis, combined with the continuing recession in Japan, sharply reduced global demand for many products, particularly steel. That global decline in demand for steel products was only partially offset by the continuing strength of the American economy, and was, in fact, exacerbated by the strike against General Motors in the summer of 1998, which idled the world's largest automobile manufacturer for several weeks.

While world demand for steel remained high into 1998, the global overcapacity in the industry deflated prices and dampened profits, but did not fundamentally erode the competitive position of the U.S. steel industry. The collapse of demand worldwide, however, exposed the overcapacity in world steel markets and led to a sharp

decline in world prices. The sharp devaluation or depreciation in foreign currencies with respect to the U.S. dollar and the continuing strong growth in the United States, combined with excess capacity overseas, led to a dramatic surge in imports from abroad. The great bulk of those imports were from three countries—Japan, Russia, Brazil and South Korea—where past and, in several respects, continuing state intervention in the market had led to significant excess capacity.

3. SURGE IN IMPORTS SOLD BELOW COST OR AT SUBSIDIZED RATES

The third factor that led to the current conditions in the steel industry was the reaction of foreign steel manufacturers to eroding domestic demand and pressure, in some instances, to maintain production and employment levels. Foreign steel manufacturers began shifting production toward the U.S. market, selling at prices below their costs of production, according to the findings of the Department of Commerce in unfair trade actions filed by the U.S. steel industry.

Those producers also benefited, in certain instances, from foreign government subsidies according to the Commerce Department. Subsidies have the effect of buffering the subsidy recipients from the competitive effects of the collapse in demand. In effect, the subsidies permit them to continue to sell at prices below their costs without facing the financial consequences of those actions.

B. Impact on the Industry

Each of the factors noted above played a significant role in the sharp erosion in the competitive position of the U.S. industry in 1998. Over the past 15 years, the U.S. industry has invested over $50 billion in new technology, the modernization of equipment and facilities, and the training of workers. The result was a dramatic increase in productivity and a sharp improvement in the fortunes of the industry.

Those changes in the industry were largely driven by the expansion of domestic competition from mini-mills operating electric arc furnaces and relying on low-cost scrap as a source material. As the mini-mills refined their technology and steadily expanded into new product lines, the rest of the industry was forced to adjust as well. That led to a stronger, globally competitive domestic steel industry. It also led to a dramatic down-sizing in employment as the number of workers required to produce a ton of steel steadily declined with the increases in productivity.

The U.S. industry has also become more closely integrated with international markets. That is due both to the importance of foreign demand absorbing some of the continuing global overcapacity, as well as the increasing reliance on certain low-cost foreign manufacturers to produce semi-finished steel products for finishing in the United States. In other words, the U.S. steel industry had become a major importer of steel in its own right.

In 1997, the industry produced record amounts of steel. That steel was shipped principally to domestic consuming industries, but certain sectors were exporting growing, albeit small, quantities to foreign markets as well. The industry continued its plans to invest

in new plants and equipment, and expand production capacity, based on the positive market outlook for growing domestic and foreign demand for steel.

With the collapse of foreign demand, the dramatic surge in imports, and fierce price-cutting by foreign competition, particularly in hot-rolled steel products, the U.S. industry, however, faced a dramatic erosion in its pricing power and its profitability. While the industry continued to ship steel at near record levels in 1998, individual operations were forced to sell at or significantly below their own costs to meet the surge in foreign competition.

That led to a significant idling of capacity in the United States, even after the United Auto Workers strike against General Motors was resolved and the company resumed full production. The surge in import competition also led to significant layoffs and three steel companies have declared bankruptcy. While those job losses were not inconsistent with the long-term trend in the industry, the impact was particularly acute in certain enterprises that faced the fiercest competition from abroad.

Perhaps the most striking difference, however, between the United States and certain of its foreign competitors is the degree to which they are exposed to the pressure of the capital markets. In the United States, the industry must compete for capital with other rapidly expanding sectors of the U.S. economy, such as the computer software and telecommunications sectors. Where foreign steel manufacturers are insulated from the pressures of the capital markets by government action or, for example, the toleration of a domestic cartel in the industry, the foreign manufacturer can continue to produce and sell steel under circumstances that would drive an American manufacturer out of business. That has the effect of forcing the U.S. steel industry to bear a higher share of the burden of economic adjustment in the steel industry to market conditions like the Asian financial crisis.

C. U.S. Government Response

The U.S. steel industry responded to the dramatic surge in below cost sales by filing petitions for relief under the antidumping and countervailing duty laws on hot-rolled products from Japan, Russia, and Brazil, and on carbon-quality steel plate from the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the former Yugoslav Republic of Macedonia. The industry also filed unfair trade actions against imports of stainless steel products from Belgium, Canada, France, Germany, Italy, Japan, Mexico, South Korea, South Africa, Taiwan, and the United Kingdom, and cold-rolled steel from Japan, Russia, Brazil, Argentina, China, Indonesia, South Africa, Slovakia, Taiwan, Thailand, Turkey, and Venezuela.

In processing these cases, the Department of Commerce relied on the flexibility provided under the unfair trade laws to accelerate the investigation of the allegations raised in the petitions as much as possible. In addition, the Department worked with the Bureau of Census to accelerate the rate at which import information critical to the industry's cases could be made public. The Department also adopted a new methodology to account for significant currency-driven distortions in dumping margin calculations in an attempt to

ensure that dumping was not being masked by large currency devaluations.

The filing of the U.S. steel industry's unfair trade actions led to a sharp decrease in the imports of products subject to the investigation. The Department of Commerce ultimately found significant dumping and, in certain instances, subsidy margins against the foreign exporters of hot-rolled steel and stainless steel sheet and strip. The Department issued preliminary determinations with respect to steel plate and is still in its preliminary investigation of cold-rolled steel. On June 11, in the case of imports of hot-rolled products from Japan, the U.S. International Trade Commission unanimously found the industry had been injured or threatened with material injury by reason of the dumped imports.

In the course of investigating the allegations raised by the industry's petitions, the Department of Commerce also began a series of negotiations on suspension agreements. Such agreements suspend an unfair trade action in favor of a negotiated agreement that normally sets a price floor for imports from the companies affected, and, in the case of non-market economies, may set an overall quantitative limit as well. On July 13, 1999, the Department concluded two agreements with Russia. In the first of those agreements with Russia, the Department negotiated an arrangement that barred entry of Russian hot-rolled steel for 6 months and then permitted imports subject to significant limitations on prices and quantities. The second agreement sharply limited imports of other types of steel products from Russia, not just those subject to the antidumping investigation. On July 7, 1999, the Department finalized suspension agreements with Brazil limiting the price and quantity at which hot-rolled steel could be sold in the United States.

The response to the suspension agreements among some segments of the U.S. steel industry has been negative. In the view of the critics, the Department should have completed the investigations and imposed the resulting antidumping and countervailing duties on the theory that the margins would be so significant that they would close the U.S. market entirely to the dumped or subsidized imports. In the critics' view, although the agreements sharply limit the dumped and subsidized imports, they do not go as far as the law might have gone had the cases run their course, and the investment made by private parties in litigating the cases was undercut.

The Administration has also responded to the Asian financial crisis and the economic difficulties facing Russian with policies designed to restore global economic growth. While the policy approach adopted has been subject to ongoing scrutiny and considerable criticism, a number of the Asian economies that had suffered through the first wave of the financial crisis do appear to have resumed economic growth. The most notable of these is South Korea, which not coincidentally undertook the deepest reforms of its own economy.

In other words, the actions taken by the administration to date have been designed to address two of the three root problems facing the U.S. steel industry—the surge in below cost sales of foreign steel and the restoration of foreign demand. While the administration's policies have not accomplished all that the industry would have preferred, imports have fallen off sharply and even those U.S.

mills facing the fiercest initial competition from surging imports have begun hiring workers laid off in the midst of the heaviest competition from below cost sales of foreign steel.

What the Administration has not done to date is to adopt a comprehensive plan for addressing the more fundamental problem facing the industry—that of global overcapacity and the foreign government practices that insulated foreign steel producers from the capital market pressures faced day-to-day by U.S. steel companies.

D. Congressional Action

The onset of the surge in imports led to the introduction of a number of legislative proposals. In March 1999, the House passed a measure—H.R. 975—that would impose quantitative limits on imported steel. Similar legislation—S. 395—had been introduced in the Senate by Senator Rockefeller. In the interim, imports of foreign steel have fallen to levels below those set in these bills, but advocates for the bills insist that quantitative limits are needed to ensure against the sort of import surge the industry faced in 1997 and 1998.

Two other significant measures have been introduced in both the Senate and House to respond to the import surges facing the steel industry. The first would affect the use of the safeguards mechanism under section 201 of the Trade Act of 1974. Section 201 allows the President to impose restrictions on imports if the International Trade Commission finds that such imports are a substantial cause of serious injury or threat thereof to the domestic industry. The statute defines "substantial cause" as "a cause that is important and not less than any other cause." This standard is, arguably, more stringent than what is required under the World Trade Organization ("WTO") Agreement on Safeguards.

Although section 201 provides the most direct means under the U.S. trade laws to address dramatic surges in imports, regardless of whether the products are fairly or unfairly traded, the U.S. industry and the steelworkers union have generally relied instead on antidumping and countervailing duty cases.[1] In practice, section 201 has not been widely used, in part because of the relatively strict injury test the petitioner must satisfy in order to obtain relief and the fact that it is in the President's discretion whether to apply relief. That said, petitioners have been more successful recently in cases involving lamb meat, wheat gluten, and broomcorn brooms.

The lone exception to the steel industry's non-use of section 201 this decade has been the December 30, 1998, filing of a section 201 action by the steel wire rod industry. In response to the dramatic import surges facing the industry and the difficulty the industry faced in adjusting economically to those surges, the wire rod industry filed for relief under section 201 in December 1998. The decision on injury issued on May 12, 1999, evenly divided the ITC; however, under the statute, that was sufficient to forward a recommendation of relief to the President, whose decision is due on August 12, 1999.

[1] In 1984, the steel industry sought relief from import surges by filing a section 201 case. Although the ITC found injury with respect to several products and recommended an increase in tariffs, President Reagan rejected the ITC's recommendations and instead sought international agreements (so-called "voluntary restraint agreements") to limit imports.

The second measure that has garnered particular attention has been a bill to amend the antidumping and countervailing duty laws in several significant respects. The House bill, H.R. 1505, introduced by Representative English, would modify the laws in ways that would, on balance, make it easier to establish both dumping, subsidization and injury in such unfair trade cases and would reopen a number of questions that were considered by the Committee on Finance and the Congress in implementing the Uruguay Round antidumping agreement.

Apart from H.R. 975 and S. 395, which would impose quantitative limits on steel imports, most of the other bills that have been introduced thus far to address the challenges facing the steel industry are primarily aimed at creating procedural mechanisms for addressing any renewed surges in imports. Significantly, the proposed changes would apply to any petitioning industry, not steel alone.

Where action is, in fact, most needed is in eliminating the market-distorting government practices that have resulted in the persistent global overcapacity in the steel industry. As stated in the President's Report to Congress on steel in January of this year:

> [M]any foreign governments continue to view steel production and self-sufficiency in steel as prerequisites to economic development. Foreign steel industries have often been supported through government subsidies to encourage expansion or forestall restructuring.

Without the elimination of these practices, many foreign steel producers will continue to be insulated from the capital market pressures that are facing the U.S. industry. Absent the elimination of these practices, the industry will face a continuing glut of steel making capacity abroad and the industry, its workers and the country will face the consequences of the past year in steel markets whenever the economic cycle turns down again in the future. The Committee on Finance's Steel Trade Enforcement Act of 1999 is designed to spur the development and implementation of a sustained strategy for eliminating the practices of foreign governments that continue to support the overcapacity in steel manufacturing worldwide.

II. SUMMARY OF THE BILL

The Steel Trade Enforcement Act of 1999 contains five titles:

Title I would require the initiation of an investigation by the U.S. Trade Representative ("USTR" or "Trade Representative"), pursuant to the authority granted to the Trade Representative under section 301 of the Trade Act of 1974, to identify those priority foreign market-distorting practices that have contributed to the current global overcapacity in steel-making capacity. Title I would also require the USTR to develop a comprehensive strategy for securing the elimination of such practices and the distortive effects they have on the international market for steel.

Title II would modify section 201 of the Trade Act of 1974 to conform the provisions of U.S. law to those of our international obligations under the World Trade Organization Agreement on Safeguards. Title II would also accelerate the procedures for deter-

mining whether an industry in the United States was suffering serious injury, or the threat thereof, by reason of imports and, therefore, entitled to temporary relief in order to adjust to new economic conditions.

Title III would establish a procedure under which industries facing an unexpected surge in imports could apply for participation in an import monitoring program. Under Title III, those industries identified would be entitled to the early release of statistical data concerning imports of like products.

Title IV would provide instructions to the U.S. executive directors to international financial institutions to use their voice and vote and the influence of the United States to discourage any financing that would add to the existing global oversupply in steel manufacturing capacity. Title IV would also direct the executive directors to encourage the privatization of state-owned steel mills and encourage the recovery of steel demand abroad by promoting policies designed to encourage economic growth

Title V would amend the countervailing duty and antidumping laws of the United States to ensure that the administering authority, the Secretary of Commerce, must seek the approval of the domestic producers and workers before agreeing to any settlement of the investigations in the form of a suspension agreement.

III. GENERAL DESCRIPTION OF THE BILL

The legislation reported by the Finance Committee consists of the following provisions:

SECTION 1. SHORT TITLE

Section 1 provides a short title by which the legislation may be cited—the "Steel Trade Enforcement Act of 1999."

SECTION 2. FINDINGS

Section 2 details Congress' findings regarding the challenges facing the U.S. steel industry, emphasizing the need for a comprehensive strategy to seek the elimination of the market-distorting government practices, such as subsidies, state ownership and the toleration of anticompetitive practices, that have led to the persistent overcapacity in the steel industry worldwide.

SECTION 3. DEFINITIONS

Section 3 provides definitions for some of the terms used in this legislation.

TITLE I—COMPREHENSIVE STRATEGY FOR THE ELIMINATION OF MARKET-DISTORTING FACTORS AFFECTING THE GLOBAL STEEL INDUSTRY

SECTION 101. DIRECTIVE TO THE UNITED STATES TRADE REPRESENTATIVE

Section 101(a) directs the United States Trade Representative to initiate, within 45 days of the enactment of this Act, an investigation under section 302(b) of the Trade Act of 1974 of market-distorting practices that have insulated foreign steel producers from

competitive pressures and have contributed to the investment in, and development of, steel manufacturing capacity on terms inconsistent with competitive market conditions.

Section 101(b)(1) directs the Trade Representative to identify the priority foreign market-distorting practices that have the greatest impact on the U.S. steel industry as targets for action under the authorities set out in section 101(d). Section 101(b)(2) mandates that the Trade Representative annually update and publish in the Federal Register a list of the priority foreign market-distorting practices that have the greatest impact on the U.S. steel industry as targets for further action under title III of the Trade Act of 1974 or any other provision of law.

Section 101(b)(3) requires that, not later than 30 days following the annual publication in the Federal Register of the priority foreign market-distorting practices required in section 101(b)(2), the Trade Representative shall initiate an investigation of such practices under section 302(b) of the Trade Act of 1974. Such an investigation shall be initiated only if the practice is not the subject of any other investigation or action under title I of this legislation or under title III of the Trade Act of 1974; and the foreign government with respect to which a foreign market-distorting practice has been identified fails to take steps to eliminate the practice. The Trade Representative shall not be required to initiate an investigation under section 101(b)(3)(A) if the initiation of the investigation would be detrimental to the economic interest of the United States.

Section 101(c)(1) requires the Trade Representative to develop a comprehensive strategy for the elimination of the market-distorting practices identified in the course of his or her investigation and to submit such strategy to the President not later than 6 months after the date of enactment of this Act. In developing the comprehensive strategy, section 101(c)(2) directs the Trade Representative to consider all relevant factors, including:

(A) the market-distorting practices identified in the investigation;

(B) the impact of foreign market-distorting practices on the U.S. economy generally and on the U.S. steel industry and its workers, and the steel-using industries and their workers specifically;

(C) the extent to which a foreign country's market-distorting practices are prohibited under the trade agreements to which that foreign country is a party;

(D) the extent to which a foreign country's market-distorting practices are prohibited under existing commitments made by that foreign country to an international financial institution;

(E) the extent to which a foreign government's failure to enforce its antimonopoly law leads to market-distorting practices; and

(F) the views of the public, the U.S. steel industry and its workers, and steel using industries.

Section 101(c)(3) requires that the Trade Representative hold at least one public hearing on the comprehensive strategy and publish in the Federal Register notice of the investigation and the public hearing.

Section 101(d) directs the Trade Representative to include in his or her strategy, recommendations for action to address the foreign market-distorting practices identified in the investigation. The recommendations could include, but are not limited to, the following:

(1) Negotiations on a multilateral or bilateral basis to liberalize trade in steel products worldwide, including—

(A) the elimination of tariffs, quantitative restraints, licensing requirements or any other barrier to imports of steel products that have the effect of insulating foreign steel producers from competition;

(B) the elimination of any export or production subsidies conferred by foreign governments on steel producers, including the elimination of the practice of providing capital or input materials at below-market rates or other practices that have the effect of distorting the terms of trade or encouraging investment in steel manufacturing capacity on terms inconsistent with competitive market conditions;

(C) the elimination of restrictions on capital movements or investment that allow governments to insulate foreign manufacturers from the competitive effects of a functioning global capital market or otherwise permit such governments to direct financing to foreign steel manufacturers regardless of market conditions;

(D) the privatization of any state-owned steel manufacturing capacity where the government ownership permits the manufacturer to operate on terms inconsistent with competitive market conditions; and

(E) the elimination of administrative guidance by a foreign government to its steel producers that leads to market distorting practices or prevents the removal of market-distorting practices.

(2) Initiation of action under section 201 of the Trade Act of 1974 in order to redress serious injury to the industry due to a recurrence of surges in imports. The Trade Representative shall, where appropriate, recommend that the President initiate such an action.

(3) Use of the authority available to the President under section 122 of the Trade Act of 1974. In determining whether to recommend such action, the Trade Representative shall assess the impact on the steel industry of any competitive devaluations or significant depreciations in foreign currencies against the dollar.

(4) Initiation of countervailing duty actions under title VII of the Tariff Act of 1930. Such an action would help address market distorting subsidies, whether to exports or to production, and would penalize the use of subsidies that encourage investment in plant and capacity that would not be made under competitive market conditions.

(5) Initiation of antidumping actions under title VII of the Tariff Act of 1930. Such an action would help in response to—

(A) below cost sales of products into the United States where the government of the foreign producer has, through a combination of market access barriers, subsidies, or mandating or encouraging financing of foreign steel pro-

duction, encouraged the construction, maintenance, or expansion of steel manufacturing capacity on terms or under circumstances that are inconsistent with normal competitive market conditions; and

(B) sales in the United States at prices below the home market price of the foreign exporter where the failure of markets to arbitrage the difference in prices reflects government intervention in the market designed to insulate the foreign producers from competition.

(6) Initiation of an action under section 302 of the Trade Act of 1974. Such an action could be initiated in response to any action by a foreign government that violates a trade agreement to which the United States is a party or in response to any foreign government act, policy or practice that has the effect of encouraging the construction, maintenance, or expansion of steel manufacturing capacity on terms or under conditions that are inconsistent with normal competitive market conditions.

(7) Consideration by the Attorney General or the Chairman of the Federal Trade Commission of evidence of anticompetitive behavior in foreign markets that has the effect of insulating foreign steel producers from competitive pressures of the marketplace and leads to adverse impacts in the U.S. market. Anticompetitive behavior includes private anticompetitive behavior, such as cartelization; governmental toleration of anticompetitive behavior; and governmental action that encourages, requires or prevents the elimination of anticompetitive behavior.

(8) Any other action the Trade Representative deems appropriate.

Section 101(e) directs the Trade Representative to describe, as part of the comprehensive strategy, the resources necessary to implement actions recommended in the comprehensive strategy. The Committee intends that the resource needs identified in the comprehensive strategy will be considered by the Committee on Finance in the Senate and the Committee on Ways and Means in the House of Representative in the committees' consideration of authorization legislation for the relevant agencies identified in the strategy.

SECTION 102. APPOINTMENT OF COORDINATOR AND ESTABLISHMENT OF INTERAGENCY WORKING GROUP

Section 102(a) directs the USTR to appoint one Deputy Trade Representative to serve as the coordinator of the investigation to identify foreign market-distorting practices and of the development of the comprehensive strategy for eliminating such practices.

Section 102(b) directs the President to establish an interagency working group, composed of representatives from the Departments of Commerce, Justice, State, Treasury, and Labor, the National Economic Council and the National Security Council, and such other departments and agencies as the President deems appropriate, to assist the Trade Representative in the development and the implementation of the comprehensive strategy.

SECTION 103. CONSULTATION AND REPORTING REQUIREMENTS

Section 103 sets forth certain consultation and reporting requirements. Section 103(a) requires the Trade Representative to consult on a bi-monthly basis with the Senate Finance Committee and the House Ways and Means Committee during the course of the investigation and to consult regularly thereafter regarding the implementation of the strategy. Section 103(b) directs the Trade Representative to submit the comprehensive strategy report to the two congressional committees not later than 6 months after the date of enactment of this Act.

SECTION 104. INVESTIGATIONS BY INTERNATIONAL TRADE COMMISSION

Section 104(a) directs the Trade Representative to request that the International Trade Commission initiate an investigation under section 332 of the Tariff Act of 1930, subject to such deadlines as the Trade Representative may establish, and to provide such economic analyses and reports as may be necessary to the investigation and to the development of the comprehensive strategy.

Section 104(b) directs the President to make available to USTR such resources from the other agencies and departments of the executive branch as the USTR may deem necessary to conduct the investigation and develop the strategy. The resources to be made available to the Trade Representative should include the overseas reporting capabilities of the Foreign Service, the United States and Foreign Commercial Service, and the attaches of the Department of the Treasury.

TITLE II—MODIFICATIONS TO SECTION 201 OF THE TRADE ACT OF 1974

Title II makes certain modifications to chapter 1 of Title II of the Trade Act of 1974 (the "1974 Act"). This law is popularly known as "section 201," the "Escape Clause" and as the "Safeguards Law." The Committee's express intent is to draw section 201 into conformity with the World Trade Organization Agreement on Safeguards (the "WTO Safeguards Agreement") and that, as modified, section 201 should be interpreted and applied in a manner consistent with the Agreement.

Determining causation and injury

Section 201(a) of the Act conforms the current standard of causation in section 201(a) of the 1974 Act to reflect the standard in the WTO Safeguards Agreement. The WTO standard requires that imports "cause or threaten to cause serious injury," while the current standard of causation in U.S. law requires that imports be a "substantial cause of serious injury, or the threat thereof, to the domestic industry." This bill employs the term "cause," so as to conform the causation standard in section 201(a) of the 1974 Act with the WTO Safeguards Agreement. An identical conforming change is also made in this legislation to section 202(b)(1)(A) of the 1974 Act.

Section 201(b)(2) amends the Safeguards Law to clarify that the term "cause" means a cause that is important and contributes significantly to the serious injury to the domestic industry, but is not necessarily the most important cause. This clarification is made by

amending section 202(b)(1)(B) of the 1974 Act. The intent of this provision is to conform the definition of causation in the Safeguards Law with that required by Article 4 of the WTO Safeguards Agreement.

Section 201(b)(3)(A) amends section 202(c)(1)(A) of the 1974 Act to include additional factors that the Commission must consider in determining whether a petitioner has suffered serious injury or the threat of serious injury. Specifically, the provision amends section 202(c)(1)(A) of the 1974 Act to require the Commission to consider, among other factors, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment in determining whether there is serious injury. These factors are derived from Article 4(2)(a) of the WTO Safeguards Agreement.

Section 201(b)(3)(B) amends 202(c)(1)(B) of the 1974 Act to require the Commission to take into account certain additional factors in determining whether there exists the threat of serious injury. Specifically, this provision requires the Commission to consider, among other things, foreign production capacity, foreign inventories, the level of demand in third country markets, and the availability of other export markets to absorb any additional exports.

Section 201(b)(3)(C) amends section 202(c)(1)(C) of the 1974 Act to require that the Commission consider certain additional factors in determining whether imports are a cause of serious injury. Specifically, the provision requires that the Commission consider the rate, amount, and timing of the increase in imports of the product concerned in absolute and relative terms, including whether there has been a substantial increase in imports over a short period of time and the share of the domestic market taken by increased imports. The purpose of this section is to ensure that factors associated with an import surge are taken into account in determining whether imports are a cause of serious injury.

Section 201(b)(3)(D) amends section 202(c) of the 1974 Act to provide that the Commission, in making its determination of serious injury, or the threat thereof, may reduce the weight accorded to the data for the period after the petition has been filed or the request has been made, if there has been any change in the volume of imports that has occurred since that time.

It is the Committee's intent that, in determining whether to provide relief and, if so, in what amount, the President will continue the practice of taking into account relief provided under other provisions of law, such as the antidumping and countervailing duty laws, which may alter the amount of relief necessary under section 203 of the 1974 Act.

Provisional relief

Section 201(b)(4) makes certain changes regarding the granting of provisional relief. First, the provision amends section 202(d)(2)(A) of the 1974 Act to expand the availability of provisional relief to investigations initiated at the request of the President or the Congress. Under current law, provisional relief is available only when the petition is filed by the domestic industry. Second, this provision would specifically enumerate import surges as

being a relevant factor in determining whether critical circumstances are found and provisional relief is warranted.

Third, this provision shortens the time available for deciding on provisional relief. Specifically, the time for the Commission to make its determination is reduced from 60 days to 45 days. In addition, the time available for the President to determine whether to follow a critical circumstances finding of the Commission is reduced from 30 to 20 days. As a result, this legislation would shorten the total time frame for triggering provisional relief from 90 to 65 days.

Determinations by the President

Section 201(c)(1) makes certain modifications to section 203(a) of the 1974 Act relating to the actions of the President after receiving an affirmative finding from the Commission. First, the provision amends section 203(a) of the 1974 Act to direct the President to take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition, unless such actions have an adverse impact on the United States substantially out of proportion to the benefits of such action. Second, in determining what remedy to impose, the provision would direct the President to give substantially greater weight to the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not granted, unless doing so would be inconsistent with the overall economic interest of the United States.

In determining whether to provide relief and the amount of that relief, the President should continue the practice of taking into account relief provided under other provisions of law, such as the antidumping and countervailing duty laws. Taking into account such relief may alter the amount of relief necessary under section 203 of the 1974 Act.

Action by Congress

Section 201(c)(1) makes certain modifications to section 203(a) of the 1974 Act relating to the time available to Congress to act on an affirmative finding by the Commission. Under current law, if the Commission makes an affirmative finding, but the President decides to take no action or to take an action that differs from the Commission's recommendation, Congress has 90 days to enact the Commission's recommendation through the passage of a joint resolution. This legislation amends section 203(c) of the 1974 Act by shortening the period available to Congress to pass such a joint resolution from 90 to 60 days.

TITLE III—TIMELY RELEASE OF IMPORT DATA

Title III includes a number of provisions to improve the ability of U.S. companies to monitor imports and to obtain the early release of data regarding such imports. The purpose of these provisions is to allow U.S. companies to assess more quickly whether there is a surge in imports of a particular product.

Section 301 amends section 332 of the Tariff Act of 1930 to establish a statutory procedure that would enable domestic industries or representatives of domestic industries to request that the President

consider whether import monitoring is appropriate, and if it is, to direct him to request monitoring and data collection by the ITC. The requesting party would have to allege that the item is being imported in such increased quantities as to cause serious injury, or threat thereof, to the domestic industry.

Section 302 provides the Director of the Office of Management and Budget with the authority to grant an exception to the publication dates established for the release of data on United States international trade in goods and services in order to permit public access to preliminary international trade import data. Section 302 requires the Director to notify Congress of the early release of data.

Section 303 directs the Secretaries of Treasury and Commerce and the International Trade Commission to establish a suffix or other indicator to the Harmonized Tariff Schedule of the United States for merchandise that is subject to antidumping or countervailing duty orders or subject to an action by the President pursuant to section 201 or section 406 of the Trade Act of 1974. This provision would allow for better tracking of imports that are subject to such orders.

Section 304(a) directs the Secretary of Commerce to monitor imports on a monthly basis for import surges and potential unfair trade through the year 2000. Products to be monitored shall be determined by the Secretary of Commerce based on the percentage increase in imports, the volume or value of imports, as appropriate, the level of import penetration and any other factor the Secretary considers necessary. The Act provides that the products to be monitored shall include steel mill products and other import-sensitive products, so long as such products meet the necessary criteria established by the Secretary.

Section 304(b) directs the Secretary of Commerce to submit reports to Congress summarizing the monitoring activities under this section and identifying products to be monitored in the next calendar year. The Secretary of Commerce is also directed to determine whether trade conditions during the calendar year 1999 merit extending the import monitoring program beyond the program's scheduled expiration at the end of calendar year 2000.

Section 304(c) directs the Secretary of Commerce to establish a "Steel Import Monitoring and Enforcement Support Center" within the Department of Commerce. The purpose of this center is to monitor imports of steel mill products under this section and to monitor and investigate imports of steel mill products as may be required pursuant to section 301 of the Act.

TITLE IV—INTERNATIONAL FINANCIAL INSTITUTIONS

Section 401 of the Act requires the Secretary of the Treasury to instruct the U.S. Executive Directors of each international financial institution—such as the World Bank and the International Monetary Fund—to use aggressively the voice and vote of the United States to:

- vigorously oppose loans or other financial assistance that would be used to provide financial assistance to the steel industry in any way that would encourage the expansion of existing steel-making capacity;

- vigorously promote policies to encourage the privatization of steel mills that remain in state ownership; and
- vigorously promote policies that encourage immediate economic growth and the resumption and increase in the domestic demand for steel.

The purpose of this provision is to ensure that the involvement of the United States in the international financial institutions does not contribute to the maintenance or enactment of market-distorting practices that have led to a persistent overcapacity in global steel capacity.

TITLE V—SUSPENSION AGREEMENTS

Section 501 of the Act amends section 704(d) and 734(d) of the Tariff Act of 1930 to require the Secretary of Commerce first to obtain approval from the domestic producers or workers (who account for more than 50 percent of the production of the domestic like product produced by those expressing an opinion on the agreement) before entering into any agreement suspending a pending antidumping or countervailing duty investigation. Such agreements are based on commitment by foreign producers with respect to price (or, in cases involving nonmarket economies or subsidy allegations, both price and quantity) as an alternative means of eliminating the injurious effects of dumped or subsidized imports. Section 501 allows the Secretary to enter into such agreements, where such domestic producer or worker support is not forthcoming, only if the Secretary determined that the failure to enter into such an agreement would undermine the national security interests of the United States or pose an extraordinary threat to the economy of the United States.

IV. CONGRESSIONAL ACTION

The Committee considered the legislation in the form of an original bill on June 16, 1999, and ordered it reported favorably on the basis of a recorded vote.

V. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the roll call votes in the Committee's consideration of the Steel Trade Enforcement Act of 1999.

A. Motion to Report the Bill

The Steel Trade Enforcement Act of 1999 was ordered favorably reported by a roll call vote of 9 yeas and 2 nays on June 16, 1999. The vote, with a quorum present, was as follows (proxy votes are not counted in the total vote on a motion to order a bill reported):

Yeas.—Senators Roth, Chafee, Grassley, Hatch, Murkowski, Lott (proxy), Jeffords (proxy), Moynihan, Baucus, Breaux (proxy), Conrad (proxy), Graham, Bryan (proxy), Kerrey (proxy) and Robb.

Nays.—Nickles (proxy), Gramm, Mack (proxy) and Rockefeller.

B. Votes on Amendments

(1) An amendment by Senator Baucus to add to Title I a requirement that, once the comprehensive strategy is completed and reported to the Congress, the Congress would have 30 days to pass a resolution of disapproval on that strategy failed by voice vote.

Present.—Senators Roth, Chafee, Grassley, Gramm, Mack, Thompson, Moynihan, Baucus, Rockefeller, Bryan and Robb.

(2) An amendment by Senator Gramm to strike Title II of the Act failed by a vote of 5 yeas and 14 nays.

Yeas.—Senators Chafee, Murkowski, Nickles (proxy), Gramm, and Mack (proxy).

Nays.—Senators Roth, Grassley, Hatch, Lott (proxy), Jeffords (proxy), Moynihan, Baucus (proxy), Rockefeller, Breaux (proxy), Conrad (proxy), Graham, Bryan (proxy), Kerrey (proxy) and Robb.

(3) An amendment by Senators Moynihan and Hatch that would amend section 704 (countervailing duty law) and 731 (antidumping law) of the Tariff Act of 1930 to require majority domestic producer or worker support before the Administration can conclude agreements suspending ongoing investigation, subject to an exception if the President determines that failure to enter into such an agreement would undermine the national security of the United States or pose an extraordinary threat to the economy of the United States, passed by a vote of 11 to 8.

Yeas.—Senators Roth, Hatch, Murkowski, Jeffords, Moynihan, Baucus, Rockefeller, Breaux, Conrad, Kerrey (proxy) and Robb.

Nays.—Senators Chafee, Grassley, Nickles (proxy), Gramm, Mack, Thompson, Graham (proxy) and Bryan.

VI. BUDGETARY IMPACT

A. Committee Estimates

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the bill.

• CBO estimates that implementing S. 1254 would cost the federal government between $500,000 and $1 million in fiscal year 2000 and less than $500,000 each year thereafter. On the revenue side, the bill could result in either an increase or a decrease in customs duties collected on imports. CBO, however, has no basis for predicting the impact of the bill on revenues and, therefore, cannot estimate the net revenue impact of this bill.

B. Budget Authority and Tax Expenditures

1. BUDGET AUTHORITY

In accordance with section 308(a)(1) of the Budget Act the Committee states that the Steel Trade Enforcement Act of 1999 involves no new or increased budget authority.

2. TAX EXPENDITURES

In accordance with section 308(a)(2) of the Budget Act, the Committee states that the provisions of the Steel Trade Enforcement

Act of 1999 will result in no changes in tax expenditures over the period fiscal years 1999–2009.

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has submitted the following statement on the budgetary impact of the Steel Trade Enforcement Act of 1999:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 1999.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed closed cost estimate for the S. 1254, Steel Trade Enforcement Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The principal CBO staff contacts are Hester Grippando (for revenues), and John Righter (for Spending).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1254—Steel Trade Enforcement Act of 1999

Summary: The Steel Trade Enforcement Act of 1999 would direct federal agencies to increase their monitoring activities of steel imports and would broaden the conditions under which the President could take action against injurious imports. Subject to appropriation of necessary amounts, CBO estimates that implementing this bill would cost the federal government close to $1 million in fiscal year 2000 and less than $500,000 each year thereafter. That estimate would cover administrative costs of the International Trade Commission (ITC), the United States Trade Representative (USTR), and the Departments of Commerce and Justice. The bill is likely to affect collections of customs duties, which a recorded in the budget as governmental receipts. However, CBO finds no basis to estimate this revenue impact. Since the bill could affect revenues, pay-as-you-go procedures would apply.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. The bill would impose a private-sector mandate on importers by broadening the conditions under which the U.S. Government could impose trade restrictions. However, CBO has no basis for estimating the cost of this mandate.

Estimated cost to the Federal Government: H.R. 1254 would affect both spending subject to appropriation and receipt (i.e., revenues).

Spending subject to appropriation

S. 1254 would require that the USTR initiate an investigation of the anticompetitive practices of foreign governments in the steel market. The USTR would have six months to develop and submit to the President and the Congress a comprehensive strategy for eliminating the anticompetitive practices uncovered in its investigation. The bill also would require the USTR to annually update and publish a list of the anticompetitive practices that have the greatest impact on the United States steel industry and that will be targeted for further action. The bill would require that other agencies, including the International Trade Commission and the Departments of Commerce, and Justice, provide technical assistance to USTR. In addition, the bill would establish a center within the Department of Commerce to monitor and investigate imports of steel mill products. Based on information from the Administration, CBO estimates that implementing S. 1254 would cost the federal government between $500,000 and $1 million in fiscal year 2000 and less than $500,000 each year thereafter.

Revenues

The bill would amend sections 201 through 203 of the Trade Act of 1974, which allow the President to place restrictions on imports if the International Trade Commission finds that such imports are threatening or causing serious injury to U.S. domestic industry. Under current law, in order for a surge of imports to be considered a threat or a cause of serious injury to a domestic industry, ITC must determine that no other factors are threatening or causing more significant injury to that industry. This bill would amend the Trade Act of 1974 so that imports would no longer need to be the most important threat or cause of injury to a domestic industry in order for ITC to make a determination of injury.

The bill would likely increase the number of favorable decisions by ITC on petitions by domestic industries seeking relief from imports under the Trade Act of 1974. That act authorizes the President to take varied steps to address import injury, including imposing quotas and raising tariffs. Depending on the course of action taken by the President, government revenues—that is, the amount of customs duties—could increase or decrease. CBO has no basis for predicting such Presidential actions and thus cannot estimate the revenue impact of this bill.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting S. 1254 could affect receipts, but CBO has no basis for estimating the amount of any such change.

Estimated impact on state, local, and tribal governments: The bill contains no intergovernmental mandates as defined in UMRA and would not affect the budget of state, local, or tribal governments.

Estimated impact on the private sector: The bill would broaden the conditions under which the U.S. Government could impose trade restrictions on imports that are found to seriously harm or threaten domestic production of competing or similar goods. Any trade restrictions resulting from this bill—such as traffics, quotas,

or import licenses—would impose mandates on importers of affected items. Those mandates would impose costs on the private sector, but CBO cannot predict the incidence of trade restrictions resulting from the new conditions defined in this bill and thus has no basis for estimating those costs.

Estimate prepared by: Federal Costs: Hester Grippando (Revenues), Sunita D'Monte, John Righter, and Mark Hadley. Impact on the Private Sector: Keith Mattrick.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis; G. Thomas Woodword, Assistant Director for Tax Analysis.

V. REGULATORY IMPACT AND UNFUNDED MANDATES

A. Regulatory Impact

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of the Steel Trade Enforcement Act of 1999.

1. IMPACT ON INDIVIDUALS AND BUSINESSES

The Committee states that this Act will not involve any new regulatory burdens on individuals or businesses. The Committee states, however, that this Act would broaden the conditions under which the U.S. Government could impose trade restrictions on imports that are found to seriously harm or threaten domestic production of competing or similar goods. Any trade restrictions resulting from this bill—such as tariffs, quotas, or import licenses—would have an impact on importers and consumers of affected items.

2. IMPACT ON PERSONAL PRIVACY AND PAPERWORK

The Steel Trade Enforcement Act of 1999 will have no impact on personal privacy. Some of its provisions require the filing of certain information by businesses with the U.S. Government in order to demonstrate eligibility for certain programs.

B. Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4). The Committee on Finance has reviewed the provisions of the Steel Trade Enforcement Act of 1999 as approved by the Committee on June 16, 1999. In accordance with the requirements of Pub. L. No. 104–4, the Committee has determined that the Act contains no intergovernmental mandates, as defined in the UMRA and would not affect the budgets of state, local or tribal governments.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974

* * * * * * *

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

SEC. 201. ACTION TO FACILITATE POSITIVE ADJUSTMENT TO IMPORT COMPETITION.

(a) PRESIDENTIAL ACTION.—If the United States International Trade Commission (hereinafter referred to in this chapter as the "Commission") determines under section 202(b) that an article is being imported into the United States in such increased quantities [as to be a substantial cause of serious injury, or the threat thereof,], *absolute or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury* to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this chapter, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

* * * * * * *

(b) INVESTIGATIONS AND DETERMINATIONS BY COMMISSION.—

(1)(A) Upon the filing of a petition under subsection (a), the request of the President of the Trade Representative, the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities [as to be a substantial cause of serious injury, or the threat thereof,], *absolute or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury* to the domestic industry producing an article like or directly competitive with the imported article.

[(B) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.]

(B) In this section, the term "cause" means a cause that is important and contributes significantly to the serious injury to the domestic industry, but is not necessarily the most important cause.

(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days (180 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(B) If before the 100th day after a petition is filed under subsection (a)(1) the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days (210 days if the petition alleges that critical circumstances exist) after the date referred to in subparagraph (A).

(3) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted under subsection (a), to respond to the presentations of other parties and consumers, and otherwise to be heard.

(c) FACTORS APPLIED IN MAKING DETERMINATIONS.—

(1) In making determinations under subsection (b), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

[(A) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment of underemployment within the domestic industry;**]**

(A) with respect to serious injury, change in the level of sales, production, productivity, capacity utilization, profits and losses and employment, including—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury—

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets**[**; and**]**, *and*

(iv) foreign production capacity, foreign inventories, the level of demand in third country markets, and the availability of other export markets to absorb any additional exports; and

[(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.]

(C) with respect to cause—

(i) the rate, amount, and timing of the increase in imports of the product concerned in absolute and relative terms, including whether there has been a substantial increase in imports over a short period of time, and

(ii) the share of the domestic market taken by increased imports.

[(2) In making determinations under subsection (b), the Commission shall—

[(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

[(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury or threat of domestic industry.

[The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).]

(2) In making determination under subsection (b), the Commission shall—

(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(B) examine factors other than imports which may cause or threaten to cause serious injury to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).

(3) In making determinations under subsection (b), the Commission shall consider whether any change in the volume of imports that has occurred since a petition under subsection (a) was filed or a request under subsection (b) was made is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the petition under subsection (a) was filed or the request under subsection (b) was made in making its determination of serious injury, or the threat thereof.

(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a

recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).

[(3)**]** *(4)* The presence or absence of any factor which the Commission Is required to evaluate in subparagraphs (A) **[**and (B)**]**, *(B), and (C)* of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to **[**be a substantial cause of serious injury, or the threat thereof,**]** *cause or threaten to cause serious injury* to the domestic industry.

[(4)**]** *(5)* For purposes of subsection (b), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(C) may, in case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

[(5)**]** *(6)* In the course of any proceeding under this subsection, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

[(6)**]** *(7)* For purposes of this section:

(A)(i) The term "domestic industry" means, with respect to an article, the producers as a whole of the like or directly competitive articles or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.

(ii) The term "domestic industry" includes producers located in the United States insular possessions.

(B) The term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

(C) The term "serious injury" means a significant overall impairment in the position of a domestic industry.

(D) The term "threat of serious injury" means serious injury that is clearly imminent.

(d) PROVISIONAL RELIEF.—

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product or citrus product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to ⟦be, or likely to be, a substantial cause of serious injury, or the threat thereof,⟧ *cause, or be likely to cause or threaten to cause, or be likely to threaten to cause serious injury* to such domestic industry.

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930, the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b).

(C) If a petition filed under subsection (a)—

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under subparagraph (B) for not less than 90 days; and

(ii) requests that provisional relief by provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are ⟦a substantial cause of serious injury, or the threat thereof,⟧ *causing or threatening to cause serious injury* to the domestic industry producing a like or directly competitive perishable product or citrus product and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

(D) At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under this subsection.

(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(F) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

(G) Within 7 days after receiving a report from the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury.

[(2)(A) When a petition filed under subsection (a) alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition, the Commission shall, not later than 60 days after the petition containing the request was filed, determine, on the basis of available information, whether—

[(i) there is a clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

[(ii) delay in taking action under this chapter would cause damage to that industry that would be difficult to repair.**]**

(2)(A) Whenever a petition filed under subsection (a) of a request filed under subsection (b) alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition or request, the Commission shall, not later than 45 days after the petition or request is filed, determine, on the basis of available information, whether

(i) there is clear evidence that increased imports (either actual or relative to domestic production) of the article are causing or threatening to cause serious injury to the domestic industry producing an article like or directly competitive with the imported article; and

(ii) delay in taking action under this chapter would cause damage to that industry that would be difficult to repair.

In making the evaluation under clause (ii), the Commission should consider, among other factors that it considers relevant, the timing and volume of the imports, including whether there has been a substantial increase in imports over a short period of time, and any other circumstances indicating that delay in taking action under this chapter would cause damage to the industry that would be difficult to repair.

(B) If the determination under subparagraph (A)(i) and (ii) are affirmative, the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(C) The Commission shall immediately report to the President its determinations under subparagraph (A)(i) and (ii) and, if the determinations are affirmative, the finding under subparagraph (B).

(D) Within [30] *20* days after receiving a report from the Commission under subparagraph (C) containing an affirmative determination under subparagraph (A)(i) and (ii), the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (B), shall proclaim, for a period not to exceed 200 days, such provisional relief that the President considers necessary to prevent or remedy the serious injury. Such relief shall take the form of an increase in, or the imposition of, a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

* * * * * * *

SEC. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY.

(a) IN GENERAL.—

(1)(A) After receiving a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition [and provide greater economic and social benefits than costs] *and will not have an adverse impact on the United States substantially out of proportion to the benefits of such action.*

(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1), that the President determines to be appropriate and feasible under such subparagraph.

(C) The interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 shall, with respect to each affirmative determination reported under section 202(f), make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account—

(A) the recommendation and report of the Commission;

(B) the extent to which workers and firms in the domestic industry are—

(i) benefitting from adjustment assistance and other manpower programs, and

(ii) engaged in worker retraining efforts;

(C) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 202(a)) to make a positive adjustment to import competition;

(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(F) other factors related to the national economic interest of the United States, including, but not limited to—

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this chapter,

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation**[**;**]***,*

except that the President shall give substantially greater weight to the factors set out in clause (i) than to those set out in clauses (ii) and (iii), unless doing so would be inconsistent with the overall economic interest of the United States;

(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

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(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—If the President reports under subsection (b)(1) or (2) that—

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1); or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) within the **[**90**]** *60*-day period beginning on the date of which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

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(e) LIMITATIONS ON ACTION.—

(1)(A) Subject to subparagraph (B), the duration of the period in which an action taken under this section may be in effect shall not exceed 4 years. Such period shall include the period, if any, in which provisional relief under section 202(d) was in effect.

(B)(i) Subject to clause (ii), the President, after receiving an affirmative determination from the Commission under section 204(c) (or, if the Commission is equally divided in its determintion, a determination which the President considers to be an affirmative determination of the Commission), may extend the effective period of any action under this section if the President determines that—

(I) the action continues to be necessary to prevent or remedy the serious injury; and

(II) there is evidence that the domestic industry is making a positive adjustment to import competition.

(ii) The effective period of any action under this section, including any extensions thereof, may not, in the aggregate, exceed 8 years.

(2) Action of a type described in subsection (a)(3)(A), (B), or (C) may be taken under subsection (a)(1), under section 202(d)(1)(G), or under section 202(2)(D) only to the extent the cumulative impact of such action does not exceed the amount neccessary to prevent or remedy the serious injury.

(3) No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(4) 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 average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

(5) An action described in subsection (a)(3)(A), (B), or (C) that has an effective period of more than 1 year shall be phased doen at regular intervals during the period in which the action is in effect.

(6)(A) The suspension, pursuant to any action taken under this section, of—

(i) subheading 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States with respect to an article; and

(ii) the designation of any article as an eligible article for purposes of title V;

shall be treated as an increase in duty.

(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 202(e), unless the Commission, in addition to making an affirmative determination under

section 202(b)(1), determines in the course of its investigation under section 202(b) that the serious injury, or threat thereof, [substantially] caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be—

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SEC. 264. STUDY BY SECRETARY OF COMMERCE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION; ACTION WHERE THERE IS AFFIRMATIVE FINDING.

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(c) Whenever the Commission makes an affirmative finding under section 202(b) that increased imports are [a substantial cause of serious injury or threat thereof] *causing or threatening to cause serious injury* with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

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TARIFF ACT OF 1930

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TITLE III—SPECIAL PROVISIONS

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SEC. 322. INVESTIGATIONS.

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(g) REPORTS TO PRESIDENT AND CONGRESS.—The Commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress. However, the Commission may not release information which the Commission considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress on the first Monday of December of each year hereafter a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 337 during the year for which such report is being made, the date on which each such complaint was filed, and the ac-

tion taken thereon, and the status of all investigations conducted by the commission under such section during such year and the date on which each such investigation was commenced.

(h)(1) Any entity, including any trade association, firm, certified or recognized union, or group of workers, which is representative of a domestic industry that produces an article that is like or directly competitive with an imported article, may file a request with the President pursuant to paragraph (2) for the monitoring of imports of such article under subsection (g).

(2) If the request filed under paragraph (1) alleges that an article is being imported into the United States in such increased quantities as to cause serious injury, or threat thereof, to a domestic industry, the President, within 45 days receiving the request, shall determine if monitoring is appropriate.

(3) If the determination under paragraph (2) is affirmative, the President shall request, under subsection (g), the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years.

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TITLE IV—ADMINISTRATIVE PROVISIONS

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SEC. 484. ENTRY OF MERCHANDISE.

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(f) STATISTICAL ENUMERATION.—[The Secretary]

(1) 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.

(2) The Secretary of the Treasury, the Secretary of Commerce, and the International Trade Commission shall establish a suffix or other indicator to the Harmonized Tariff Schedule of the United States for merchandise that is subject to countervailing duty orders or antidumping duty orders under title VII of this Act, or subject to actions by the President under chapter 1 of title II, or section 406, of the Trade Act of 1974.

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TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

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SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

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(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, **[**and**]**

(B) effective monitoring of the agreement by the United States is practicable**[**.**]**, *and*

(C) the domestic products or workers who support the agreement account for more than 50 percent of the production of the domestic like product produced by those expressing an opinion on the agreement.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B) (i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C) (i) and (ii).

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by the agreement exported to the United States during the period provided for elimination or offset of the countervailable subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representatives period determined by the administering authority.

(3) REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of subject merchandise.

(4) SPECIAL RULES RELATING TO DOMESTIC PRODUCER AND WORKER SUPPORT.—

(A) DETERMINATION OF INDUSTRY SUPPORT.—

(i) CERTAIN POSITIONS DISREGARDED.—

(I) PRODUCERS RELATED TO FOREIGN PRODUCERS.—In determining industry support under paragraph (1)(C), the administering authority shall disregard the position of domestic producers

who support the agreement, if such producers are related to foreign producers, as defined in section 771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected if the agreement is not accepted.

(II) PRODUCERS WHO ARE IMPORTERS.—The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(ii) SPECIAL RULE FOR REGIONAL INDUSTRIES.—If the petition which led to the proposed suspension agreement alleges that the industry is a regional industry, the administering authority shall determine whether the agreement is supported by or on behalf of the industry by applying paragraph (1)(C) on the basis of production in the region.

(B) NATIONAL SECURITY EXCEPTION.—In any case in which the administering authority determines that the domestic producers in workers who support the agreement do not account for more than 50 percent of the production of the domestic like product produced by those expressing an opinion on the agreement, the administering authority may accept the agreement, notwithstanding the provisions if paragraph (1)(C), if the President determines and certifies to the administering authority that failure to accept the agreement would undermine the national security interests of the United States or pose an extraordinary threat to the economy of the United States.

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SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

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(d) ADDITIONAL RULES AND CONDITIONS.—**[**The administering authority**]** *(1) IN GENERAL.—The administering authority* may not accept an agreement under subsection (b) or (c) unless—

[(1)**]** *(A)* it is satisfied that suspension of the investigation is in the public interest, **[**and**]**

[(2)**]** *(B)* effective monitoring of the agreement by the United States is practicable**[**.**]**, *and*

(C) the domestic producers or workers who support the agreement account for more than 50 percent of the production of the domestic like product produced by those expressing an opinion on the agreement.

(2) SPECIAL RULES RELATING TO DOMESTIC PRODUCER AND WORKER SUPPORT.—

(A) DETERMINATION OF INDUSTRY SUPPORT.—

(i) CERTAIN POSITIONS DISREGARDED.—

(I) PRODUCERS RELATED TO FOREIGN PRODUCERS.—In determining domestic producer or worker support for purposes of paragraph (1)(C), the administering authority shall disregard the position of domestic producers who support the agreement, if such producers are related to foreign producers, as defined in section

771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected if the agreement is not accepted.

(II) PRODUCERS WHO ARE IMPORTERS.—The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(ii) SPECIAL RULE FOR REGIONAL INDUSTRIES.—If the petition which led to the proposed suspension agreement alleges the industry is a regional industry, the administering authority shall determine whether the agreement is supported by or on behalf of the industry by applying paragraph (1)(C) on the basis of production in the region.

(B) NATIONAL SECURITY EXCEPTION.—In any case in which the administering authority determines that the domestic producers or workers who support the agreement do not account for more than 50 percent of the production of the domestic like product produced by those expressing an opinion on the agreement, the administering authority may accept the agreement, notwithstanding the provisions of paragraph (1)(C), if the President determines and certifies to the administering authority that failure to accept the agreement would undermine the national security interests of the United States or pose an extraordinary threat to the economy of the United States.

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