

108TH CONGRESS  
1ST SESSION

# H. R. 2738

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## AN ACT

To implement the United States-Chile Free Trade  
Agreement.



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To implement the United States-Chile Free Trade  
Agreement.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the  
 3 “United States-Chile Free Trade Agreement Implementa-  
 4 tion Act”.

5 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.  
 Sec. 2. Purposes.  
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### 1 **SEC. 2. PURPOSES.**

2       The purposes of this Act are—

3           (1) to approve and implement the Free Trade  
 4       Agreement between the United States and the Re-  
 5       public of Chile entered into under the authority of  
 6       section 2103(b) of the Bipartisan Trade Promotion  
 7       Authority Act of 2002;

8           (2) to strengthen and develop economic rela-  
 9       tions between the United States and Chile for their  
 10      mutual benefit;

11          (3) to establish free trade between the two na-  
 12      tions through the reduction and elimination of bar-  
 13      riers to trade in goods and services and to invest-  
 14      ment; and

15          (4) to lay the foundation for further coopera-  
 16      tion to expand and enhance the benefits of such  
 17      Agreement.

### 18 **SEC. 3. DEFINITIONS.**

19      In this Act:

1           (1) AGREEMENT.—The term “Agreement”  
 2 means the United States-Chile Free Trade Agree-  
 3 ment approved by the Congress under section  
 4 101(a)(1).

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

7           (3) TEXTILE OR APPAREL GOOD.—The term  
 8 “textile or apparel good” means a good listed in the  
 9 Annex to the Agreement on Textiles and Clothing  
 10 referred to in section 101(d)(4) of the Uruguay  
 11 Round Agreements Act (19 U.S.C. 3511(d)(4)).

12 **TITLE I—APPROVAL OF, AND**  
 13 **GENERAL PROVISIONS RE-**  
 14 **LATING TO, THE AGREEMENT**

15 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**  
 16 **AGREEMENT.**

17           (a) APPROVAL OF AGREEMENT AND STATEMENT OF  
 18 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of  
 19 the Bipartisan Trade Promotion Authority Act of 2002  
 20 (19 U.S.C. 3805) and section 151 of the Trade Act of  
 21 1974 (19 U.S.C. 2191), the Congress approves—

22           (1) the United States-Chile Free Trade Agree-  
 23 ment entered into on June 6, 2003, with the Gov-  
 24 ernment of Chile and submitted to the Congress on  
 25 July 15, 2003; and

1           (2) the statement of administrative action pro-  
2       posed to implement the Agreement that was sub-  
3       mitted to the Congress on July 15, 2003.

4       (b) CONDITIONS FOR ENTRY INTO FORCE OF THE  
5   AGREEMENT.—At such time as the President determines  
6   that Chile has taken measures necessary to bring it into  
7   compliance with the provisions of the Agreement that take  
8   effect on the date on which the Agreement enters into  
9   force, the President is authorized to exchange notes with  
10   the Government of Chile providing for the entry into force,  
11   on or after January 1, 2004, of the Agreement for the  
12   United States.

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

15       (a) RELATIONSHIP TO UNITED STATES LAW.—

16           (1) UNITED STATES LAW TO PREVAIL IN CON-  
17       FLICT.—No provision of the Agreement, nor the ap-  
18       plication of any such provision to any person or cir-  
19       cumstance, which is inconsistent with any law of the  
20       United States shall have effect.

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

23                   (A) to amend or modify any law of the  
24       United States, or

1 (B) to limit any authority conferred under  
2 any law of the United States,  
3 unless specifically provided for in this Act.

4 (b) RELATIONSHIP OF AGREEMENT TO STATE  
5 LAW.—

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

13 (2) DEFINITION OF STATE LAW.—For purposes  
14 of this subsection, the term “State law” includes—

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

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

19 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-  
20 VATE REMEDIES.—No person other than the United  
21 States—

22 (1) shall have any cause of action or defense  
23 under the Agreement or by virtue of Congressional  
24 approval thereof; or



1           (2) may challenge, in any action brought under  
2           any provision of law, any action or inaction by any  
3           department, agency, or other instrumentality of the  
4           United States, any State, or any political subdivision  
5           of a State on the ground that such action or inaction  
6           is inconsistent with the Agreement.

7   **SEC. 103. CONSULTATION AND LAYOVER PROVISIONS FOR,**  
8                   **AND EFFECTIVE DATE OF, PROCLAIMED AC-**  
9                   **TIONS.**

10       (a) CONSULTATION AND LAYOVER REQUIRE-  
11   MENTS.—If a provision of this Act provides that the imple-  
12   mentation of an action by the President by proclamation  
13   is subject to the consultation and layover requirements of  
14   this section, such action may be proclaimed only if—

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

17           (A) the appropriate advisory committees  
18           established under section 135 of the Trade Act  
19           of 1974 (19 U.S.C. 2155); and

20           (B) the United States International Trade  
21   Commission;

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

1 (A) the action proposed to be proclaimed  
2 and the reasons therefor; and

3 (B) the advice obtained under paragraph  
4 (1);

5 (3) a period of 60 calendar days, beginning on  
6 the first day on which the requirements set forth in  
7 paragraphs (1) and (2) have been met has expired;  
8 and

9 (4) the President has consulted with such Com-  
10 mittees regarding the proposed action during the pe-  
11 riod referred to in paragraph (3).

12 (b) EFFECTIVE DATE OF CERTAIN PROCLAIMED AC-  
13 TIONS.—Any action proclaimed by the President under the  
14 authority of this Act that is not subject to the consultation  
15 and layover provisions under subsection (a) may not take  
16 effect before the 15th day after the date on which the text  
17 of the proclamation is published in the Federal Register.

18 **SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF**  
19 **ENTRY INTO FORCE AND INITIAL REGULA-**  
20 **TIONS.**

21 (a) IMPLEMENTING ACTIONS.—

22 (1) PROCLAMATION AUTHORITY.—After the  
23 date of enactment of this Act—

24 (A) the President may proclaim such ac-  
25 tions, and

1                   (B) other appropriate officers of the  
2                   United States Government may issue such reg-  
3                   ulations,  
4                   as may be necessary to ensure that any provision of  
5                   this Act, or amendment made by this Act, that takes  
6                   effect on the date the Agreement enters into force  
7                   is appropriately implemented on such date, but no  
8                   such proclamation or regulation may have an effec-  
9                   tive date earlier than the date of entry into force.

10               (2) WAIVER OF 15-DAY RESTRICTION.—The 15-  
11               day restriction contained in section 103(b) on the  
12               taking effect of proclaimed actions is waived to the  
13               extent that the application of such restriction would  
14               prevent the taking effect on the date the Agreement  
15               enters into force of any action proclaimed under this  
16               section.

17               (b) INITIAL REGULATIONS.—Initial regulations nec-  
18               essary or appropriate to carry out the actions required by  
19               or authorized under this Act or proposed in the statement  
20               of administrative action referred to in section 101(a)(2)  
21               to implement the Agreement shall, to the maximum extent  
22               feasible, be issued within 1 year after the date of entry  
23               into force of the Agreement. In the case of any imple-  
24               menting action that takes effect on a date after the date  
25               of entry into force of the Agreement, initial regulations

1 to carry out that action shall, to the maximum extent fea-  
2 sible, be issued within 1 year after such effective date.

3 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**  
4 **CEEDINGS.**

5 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—  
6 The President is authorized to establish or designate with-  
7 in the Department of Commerce an office that shall be  
8 responsible for providing administrative assistance to pan-  
9 els established under chapter 22 of the Agreement. The  
10 office may not be considered to be an agency for purposes  
11 of section 552 of title 5, United States Code.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
13 are authorized to be appropriated for each fiscal year after  
14 fiscal year 2003 to the Department of Commerce such  
15 sums as may be necessary for the establishment and oper-  
16 ations of the office under subsection (a) and for the pay-  
17 ment of the United States share of the expenses of panels  
18 established under chapter 22 of the Agreement.

19 **SEC. 106. ARBITRATION OF CLAIMS.**

20 (a) SUBMISSION OF CERTAIN CLAIMS.—The United  
21 States is authorized to resolve any claim against the  
22 United States covered by article 10.15(1)(a)(i)(C) or  
23 10.15(1)(b)(i)(C) of the Agreement, pursuant to the In-  
24 vestor-State Dispute Settlement procedures set forth in  
25 section B of chapter 10 of the Agreement.

1 (b) CONTRACT CLAUSES.—All contracts executed by  
2 any agency of the United States on or after the date of  
3 entry into force of the Agreement shall contain a clause  
4 specifying the law that will apply to resolve any breach  
5 of contract claim.

6 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

7 (a) EFFECTIVE DATES.—Except as provided in sub-  
8 section (b), the provisions of this Act and the amendments  
9 made by this Act take effect on the date the Agreement  
10 enters into force.

11 (b) EXCEPTIONS.—Sections 1 through 3 and this  
12 title take effect on the date of the enactment of this Act.

13 (c) TERMINATION OF THE AGREEMENT.—On the  
14 date on which the Agreement ceases to be in force, the  
15 provisions of this Act (other than this subsection) and the  
16 amendments made by this Act shall cease to be effective.

17 **TITLE II—CUSTOMS PROVISIONS**

18 **SEC. 201. TARIFF MODIFICATIONS.**

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

21 (1) PROCLAMATION AUTHORITY.—The Presi-  
22 dent may proclaim—

23 (A) such modifications or continuation of  
24 any duty,

1 (B) such continuation of duty-free or ex-  
2 cise treatment, or

3 (C) such additional duties,  
4 as the President determines to be necessary or ap-  
5 propriate to carry out or apply articles 3.3, 3.7, 3.9,  
6 article 3.20 (8), (9), (10), and (11), and Annex 3.3  
7 of the Agreement.

8 (2) EFFECT ON CHILEAN GSP STATUS.—Not-  
9 withstanding section 502(a)(1) of the Trade Act of  
10 1974 (19 U.S.C. 2462(a)(1)), the President shall  
11 terminate the designation of Chile as a beneficiary  
12 developing country for purposes of title V of the  
13 Trade Act of 1974 on the date of entry into force  
14 of the Agreement.

15 (b) OTHER TARIFF MODIFICATIONS.—Subject to the  
16 consultation and layover provisions of section 103(a), the  
17 President may proclaim—

18 (1) such modifications or continuation of any  
19 duty,

20 (2) such modifications as the United States  
21 may agree to with Chile regarding the staging of any  
22 duty treatment set forth in Annex 3.3 of the Agree-  
23 ment,

24 (3) such continuation of duty-free or excise  
25 treatment, or

1           (4) such additional duties,  
2 as the President determines to be necessary or appropriate  
3 to maintain the general level of reciprocal and mutually  
4 advantageous concessions with respect to Chile provided  
5 for by the Agreement.

6           (c) ADDITIONAL TARIFFS ON AGRICULTURAL SAFE-  
7 GUARD GOODS.—

8           (1) IN GENERAL.—In addition to any duty pro-  
9 claimed under subsection (a) or (b), and subject to  
10 paragraphs (3) through (5), the Secretary of the  
11 Treasury shall assess a duty, in the amount pre-  
12 scribed under paragraph (2), on an agricultural safe-  
13 guard good if the Secretary of the Treasury deter-  
14 mines that the unit import price of the good when  
15 it enters the United States, determined on an  
16 F.O.B. basis, is less than the trigger price indicated  
17 for that good in Annex 3.18 of the Agreement or  
18 any amendment thereto.

19           (2) CALCULATION OF ADDITIONAL DUTY.—The  
20 amount of the additional duty assessed under this  
21 subsection shall be determined as follows:

22           (A) If the difference between the unit im-  
23 port price and the trigger price is less than, or  
24 equal to, 10 percent of the trigger price, no ad-  
25 ditional duty shall be imposed.

1 (B) If the difference between the unit im-  
2 port price and the trigger price is greater than  
3 10 percent, but less than or equal to 40 per-  
4 cent, of the trigger price, the additional duty  
5 shall be equal to 30 percent of the difference  
6 between the preferential tariff rate and the col-  
7 umn 1 general rate of duty imposed under the  
8 HTS on like articles at the time the additional  
9 duty is imposed.

10 (C) If the difference between the unit im-  
11 port price and the trigger price is greater than  
12 40 percent, but less than or equal to 60 per-  
13 cent, of the trigger price, the additional duty  
14 shall be equal to 50 percent of the difference  
15 between the preferential tariff rate and the col-  
16 umn 1 general rate of duty imposed under the  
17 HTS on like articles at the time the additional  
18 duty is imposed.

19 (D) If the difference between the unit im-  
20 port price and the trigger price is greater than  
21 60 percent, but less than or equal to 75 per-  
22 cent, of the trigger price, the additional duty  
23 shall be equal to 70 percent of the difference  
24 between the preferential tariff rate and the col-  
25 umn 1 general rate of duty imposed under the



1           HTS on like articles at the time the additional  
2           duty is imposed.

3           (E) If the difference between the unit im-  
4           port price and the trigger price is greater than  
5           75 percent of the trigger price, the additional  
6           duty shall be equal to 100 percent of the dif-  
7           ference between the preferential tariff rate and  
8           the column 1 general rate of duty imposed  
9           under the HTS on like articles at the time the  
10          additional duty is imposed.

11          (3) EXCEPTIONS.—No additional duty under  
12          this subsection shall be assessed on an agricultural  
13          safeguard good if, at the time of entry, the good is  
14          subject to import relief under—

15                (A) subtitle A of title III of this Act; or

16                (B) chapter 1 of title II of the Trade Act  
17                of 1974 (19 U.S.C. 2251 et seq.).

18          (4) TERMINATION.—This subsection shall cease  
19          to apply on the date that is 12 years after the date  
20          on which the Agreement enters into force.

21          (5) TARIFF-RATE QUOTAS.—If an agricultural  
22          safeguard good is subject to a tariff-rate quota, and  
23          the in-quota duty rate for the good proclaimed pur-  
24          suant to subsection (a) or (b) is zero, any additional

1 duty assessed under this subsection shall be applied  
2 only to over-quota imports of the good.

3 (6) NOTICE.—Not later than 60 days after the  
4 Secretary of the Treasury first assesses additional  
5 duties on an agricultural safeguard good under this  
6 subsection, the Secretary shall notify the Govern-  
7 ment of Chile in writing of such action and shall  
8 provide to the Government of Chile data supporting  
9 the assessment of additional duties.

10 (7) MODIFICATION OF TRIGGER PRICES.—Not  
11 later than 60 calendar days before agreeing with the  
12 Government of Chile pursuant to article 3.18(2)(b)  
13 of the Agreement on a modification to a trigger  
14 price for a good listed in Annex 3.18 of the Agree-  
15 ment, the President shall notify the Committees on  
16 Ways and Means and Agriculture of the House of  
17 Representatives and the Committees on Finance and  
18 Agriculture of the Senate of the proposed modifica-  
19 tion and the reasons therefor.

20 (8) DEFINITIONS.—In this subsection:

21 (A) AGRICULTURAL SAFEGUARD GOOD.—

22 The term “agricultural safeguard good” means  
23 a good—

24 (i) that qualifies as an originating  
25 good under section 202;

1 (ii) that is included in the United  
2 States Agricultural Safeguard Product List  
3 set forth in Annex 3.18 of the Agreement;  
4 and

5 (iii) for which a claim for preferential  
6 tariff treatment under the Agreement has  
7 been made.

8 (B) F.O.B.—The term “F.O.B.” means  
9 free on board, regardless of the mode of trans-  
10 portation, at the point of direct shipment by the  
11 seller to the buyer.

12 (C) UNIT IMPORT PRICE.—The term “unit  
13 import price” means the price expressed in dol-  
14 lars per kilogram.

15 (d) CONVERSION TO AD VALOREM RATES.—For pur-  
16 poses of subsections (a) and (b), with respect to any good  
17 for which the base rate in the Schedule of the United  
18 States to Annex 3.3 of the Agreement is a specific or com-  
19 pound rate of duty, the President may substitute for the  
20 base rate an ad valorem rate that the President deter-  
21 mines to be equivalent to the base rate.

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

23 (a) ORIGINATING GOODS.—

24 (1) IN GENERAL.—For purposes of this Act  
25 and for purposes of implementing the tariff treat-

1       ment provided for under the Agreement, except as  
2       otherwise provided in this section, a good is an origi-  
3       nating good if—

4               (A) the good is wholly obtained or pro-  
5       duced entirely in the territory of Chile, the  
6       United States, or both;

7               (B) the good—

8                       (i) is produced entirely in the territory  
9       of Chile, the United States, or both, and

10                      (I) each of the nonoriginating  
11       materials used in the production of  
12       the good undergoes an applicable  
13       change in tariff classification specified  
14       in Annex 4.1 of the Agreement, or

15                      (II) the good otherwise satisfies  
16       any applicable regional value-content  
17       or other requirements specified in  
18       Annex 4.1 of the Agreement; and

19                      (ii) satisfies all other applicable re-  
20       quirements of this section; or

21               (C) the good is produced entirely in the  
22       territory of Chile, the United States, or both,  
23       exclusively from materials described in subpara-  
24       graph (A) or (B).

1           (2) SIMPLE COMBINATION OR MERE DILU-  
2           TION.—A good shall not be considered to be an origi-  
3           nating good and a material shall not be considered  
4           to be an originating material by virtue of having  
5           undergone—

6                   (A) simple combining or packaging oper-  
7                   ations; or

8                   (B) mere dilution with water or another  
9                   substance that does not materially alter the  
10                  characteristics of the good or material.

11          (b) DE MINIMIS AMOUNTS OF NONORIGINATING MA-  
12          TERIALS.—

13               (1) IN GENERAL.—Except as provided in para-  
14               graphs (2) and (3), a good that does not undergo a  
15               change in tariff classification pursuant to Annex 4.1  
16               of the Agreement is an originating good if—

17                   (A) the value of all nonoriginating mate-  
18                   rials that are used in the production of the good  
19                   and do not undergo the applicable change in  
20                   tariff classification does not exceed 10 percent  
21                   of the adjusted value of the good;

22                   (B) the value of such nonoriginating mate-  
23                   rials is included in the value of nonoriginating  
24                   materials for any applicable regional value-con-  
25                   tent requirement; and

1 (C) the good meets all other applicable re-  
2 quirements of this section.

3 (2) EXCEPTIONS.—Paragraph (1) does not  
4 apply to the following:

5 (A) A nonoriginating material provided for  
6 in chapter 4 of the HTS, or a nonoriginating  
7 dairy preparation containing over 10 percent by  
8 weight of milk solids provided for in subheading  
9 1901.90 or 2106.90 of the HTS, that is used  
10 in the production of a good provided for in  
11 chapter 4 of the HTS.

12 (B) A nonoriginating material provided for  
13 in chapter 4 of the HTS, or nonoriginating  
14 dairy preparations containing over 10 percent  
15 by weight of milk solids provided for in sub-  
16 heading 1901.90 of the HTS, that are used in  
17 the production of the following goods:

18 (i) Infant preparations containing  
19 over 10 percent in weight of milk solids  
20 provided for in subheading 1901.10 of the  
21 HTS.

22 (ii) Mixes and doughs, containing over  
23 25 percent by weight of butterfat, not put  
24 up for retail sale, provided for in sub-  
25 heading 1901.20 of the HTS.

1 (iii) Dairy preparations containing  
2 over 10 percent by weight of milk solids  
3 provided for in subheading 1901.90 or  
4 2106.90 of the HTS.

5 (iv) Goods provided for in heading  
6 2105 of the HTS.

7 (v) Beverages containing milk pro-  
8 vided for in subheading 2202.90 of the  
9 HTS.

10 (vi) Animal feeds containing over 10  
11 percent by weight of milk solids provided  
12 for in subheading 2309.90 of the HTS.

13 (C) A nonoriginating material provided for  
14 in heading 0805 of the HTS, or any of sub-  
15 headings 2009.11.00 through 2009.39 of the  
16 HTS, that is used in the production of a good  
17 provided for in any of subheadings 2009.11.00  
18 through 2009.39 of the HTS, or in fruit or veg-  
19 etable juice of any single fruit or vegetable, for-  
20 tified with minerals or vitamins, concentrated  
21 or unconcentrated, provided for in subheading  
22 2106.90 or 2202.90 of the HTS.

23 (D) A nonoriginating material provided for  
24 in chapter 15 of the HTS that is used in the  
25 production of a good provided for in any of

1 headings 1501.00.00 through 1508, 1512,  
2 1514, and 1515 of the HTS.

3 (E) A nonoriginating material provided for  
4 in heading 1701 of the HTS that is used in the  
5 production of a good provided for in any of  
6 headings 1701 through 1703 of the HTS.

7 (F) A nonoriginating material provided for  
8 in chapter 17 of the HTS or in heading  
9 1805.00.00 of the HTS that is used in the pro-  
10 duction of a good provided for in subheading  
11 1806.10 of the HTS.

12 (G) A nonoriginating material provided for  
13 in any of headings 2203 through 2208 of the  
14 HTS that is used in the production of a good  
15 provided for in heading 2207 or 2208 of the  
16 HTS.

17 (H) A nonoriginating material used in the  
18 production of a good provided for in any of  
19 chapters 1 through 21 of the HTS, unless the  
20 nonoriginating material is provided for in a dif-  
21 ferent subheading than the good for which ori-  
22 gin is being determined under this section.

23 (3) GOODS PROVIDED FOR IN CHAPTERS 50  
24 THROUGH 63 OF THE HTS.—



1 (A) IN GENERAL.—Except as provided in  
2 subparagraph (B), a good provided for in any  
3 of chapters 50 through 63 of the HTS that is  
4 not an originating good because certain fibers  
5 or yarns used in the production of the compo-  
6 nent of the good that determines the tariff clas-  
7 sification of the good do not undergo an appli-  
8 cable change in tariff classification set out in  
9 Annex 4.1 of the Agreement, shall be consid-  
10 ered to be an originating good if the total  
11 weight of all such fibers or yarns in that com-  
12 ponent is not more than 7 percent of the total  
13 weight of that component.

14 (B) CERTAIN TEXTILE OR APPAREL  
15 GOODS.—A textile or apparel good containing  
16 elastomeric yarns in the component of the good  
17 that determines the tariff classification of the  
18 good shall be considered to be an originating  
19 good only if such yarns are wholly formed in  
20 the territory of Chile or the United States.

21 (c) ACCUMULATION.—

22 (1) ORIGINATING GOODS INCORPORATED IN  
23 GOODS OF OTHER COUNTRY.—Originating goods or  
24 materials of Chile or the United States that are in-  
25 corporated into a good in the territory of the other

1 country shall be considered to originate in the terri-  
 2 tory of the other country.

3 (2) MULTIPLE PROCEDURES.—A good that is  
 4 produced in the territory of Chile, the United States,  
 5 or both, by 1 or more producers, is an originating  
 6 good if the good satisfies the requirements of sub-  
 7 section (a) and all other applicable requirements of  
 8 this section.

9 (d) REGIONAL VALUE-CONTENT.—

10 (1) IN GENERAL.—For purposes of subsection  
 11 (a)(2), the regional value-content of a good referred  
 12 to in Annex 4.1 of the Agreement shall be cal-  
 13 culated, at the choice of the person claiming pref-  
 14 erential tariff treatment for the good, on the basis  
 15 of the build-down method described in paragraph (2)  
 16 or the build-up method described in paragraph (3),  
 17 unless otherwise provided in Annex 4.1 of the Agree-  
 18 ment.

19 (2) BUILD-DOWN METHOD.—

20 (A) IN GENERAL.—The regional value-con-  
 21 tent of a good may be calculated on the basis  
 22 of the following build-down method:

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

23 (B) DEFINITIONS.—For purposes of sub-  
 24 paragraph (A):

1 (i) The term “RVC” means the re-  
 2 gional value-content, expressed as a per-  
 3 centage.

4 (ii) The term “AV” means the ad-  
 5 justed value.

6 (iii) The term “VNM” means the  
 7 value of nonoriginating materials used by  
 8 the producer in the production of the good.

9 (3) BUILD-UP METHOD.—

10 (A) IN GENERAL.—The regional value-con-  
 11 tent of a good may be calculated on the basis  
 12 of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

13 (B) DEFINITIONS.—For purposes of sub-  
 14 paragraph (A):

15 (i) The term “RVC” means the re-  
 16 gional value-content, expressed as a per-  
 17 centage.

18 (ii) The term “AV” means the ad-  
 19 justed value.

20 (iii) The term “VOM” means the  
 21 value of originating materials used by the  
 22 producer in the production of the good.

23 (e) VALUE OF MATERIALS.—

1           (1) IN GENERAL.—For purposes of calculating  
2           the regional value-content of a good under sub-  
3           section (d), and for purposes of applying the de  
4           minimis rules under subsection (b), the value of a  
5           material is—

6                   (A) in the case of a material that is im-  
7                   ported by the producer of the good, the ad-  
8                   justed value of the material with respect to that  
9                   importation;

10                   (B) in the case of a material acquired in  
11                   the territory in which the good is produced, ex-  
12                   cept for a material to which subparagraph (C)  
13                   applies, the producer's price actually paid or  
14                   payable for the material;

15                   (C) in the case of a material provided to  
16                   the producer without charge, or at a price re-  
17                   flecting a discount or similar reduction, the sum  
18                   of—

19                           (i) all expenses incurred in the  
20                           growth, production, or manufacture of the  
21                           material, including general expenses; and

22                           (ii) an amount for profit; or

23                   (D) in the case of a material that is self-  
24                   produced, the sum of—

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit.

(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS.—

(A) ORIGINATING MATERIALS.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

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

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Chile, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the

1           production of the good, less the value of  
2           renewable scrap or byproduct.

3           (B) NONORIGINATING MATERIALS.—The  
4           following expenses, if included in the value of a  
5           nonoriginating material calculated under para-  
6           graph (1), may be deducted from the value of  
7           the nonoriginating material:

8                   (i) The costs of freight, insurance,  
9                   packing, and all other costs incurred in  
10                  transporting the material to the location of  
11                  the producer.

12                  (ii) Duties, taxes, and customs broker-  
13                  age fees on the material paid in the terri-  
14                  tory of Chile, the United States, or both,  
15                  other than duties and taxes that are  
16                  waived, refunded, refundable, or otherwise  
17                  recoverable, including credit against duty  
18                  or tax paid or payable.

19                  (iii) The cost of waste and spoilage re-  
20                  sulting from the use of the material in the  
21                  production of the good, less the value of  
22                  renewable scrap or byproducts.

23                  (iv) The cost of originating materials  
24                  used in the production of the nonorigi-

1                   nating material in the territory of Chile or  
2                   the United States.

3           (f) ACCESSORIES, SPARE PARTS, OR TOOLS.—Acces-  
4 sories, spare parts, or tools delivered with a good that  
5 form part of the good’s standard accessories, spare parts,  
6 or tools shall be regarded as a material used in the produc-  
7 tion of the good, if—

8                   (1) the accessories, spare parts, or tools are  
9                   classified with and not invoiced separately from the  
10                  good; and

11                  (2) the quantities and value of the accessories,  
12                  spare parts, or tools are customary for the good.

13           (g) FUNGIBLE GOODS AND MATERIALS.—

14                   (1) IN GENERAL.—

15                           (A) CLAIM FOR PREFERENTIAL TREAT-  
16                           MENT.—A person claiming preferential tariff  
17                           treatment for a good may claim that a fungible  
18                           good or material is originating either based on  
19                           the physical segregation of each fungible good  
20                           or material or by using an inventory manage-  
21                           ment method.

22                           (B) INVENTORY MANAGEMENT METHOD.—

23                           In this subsection, the term “inventory manage-  
24                           ment method” means—

25                                   (i) averaging;

- 1 (ii) “last-in, first-out”;
- 2 (iii) “first-in, first-out”; or
- 3 (iv) any other method—

4 (I) recognized in the generally  
5 accepted accounting principles of the  
6 country in which the production is  
7 performed (whether Chile or the  
8 United States); or

9 (II) otherwise accepted by that  
10 country.

11 (2) ELECTION OF INVENTORY METHOD.—A  
12 person selecting an inventory management method  
13 under paragraph (1) for particular fungible goods or  
14 materials shall continue to use that method for those  
15 goods or materials throughout the fiscal year of that  
16 person.

17 (h) PACKAGING MATERIALS AND CONTAINERS FOR  
18 RETAIL SALE.—Packaging materials and containers in  
19 which a good is packaged for retail sale, if classified with  
20 the good, shall be disregarded in determining whether all  
21 nonoriginating materials used in the production of the  
22 good undergo the applicable change in tariff classification  
23 set out in Annex 4.1 of the Agreement, and, if the good  
24 is subject to a regional value-content requirement, the  
25 value of such packaging materials and containers shall be



1 taken into account as originating or nonoriginating mate-  
2 rials, as the case may be, in calculating the regional value-  
3 content of the good.

4 (i) PACKING MATERIALS AND CONTAINERS FOR  
5 SHIPMENT.—Packing materials and containers for ship-  
6 ment shall be disregarded in determining whether—

7 (1) the nonoriginating materials used in the  
8 production of the good undergo an applicable change  
9 in tariff classification set out in Annex 4.1 of the  
10 Agreement; and

11 (2) the good satisfies a regional value-content  
12 requirement.

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

16 (k) TRANSIT AND TRANSSHIPMENT.—A good that  
17 has undergone production necessary to qualify as an origi-  
18 nating good under subsection (a) shall not be considered  
19 to be an originating good if, subsequent to that produc-  
20 tion, the good undergoes further production or any other  
21 operation outside the territory of Chile or the United  
22 States, other than unloading, reloading, or any other proc-  
23 ess necessary to preserve the good in good condition or  
24 to transport the good to the territory of Chile or the  
25 United States.

1       (l) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS  
 2 GOODS PUT UP IN SETS.—Notwithstanding the rules set  
 3 forth in Annex 4.1 of the Agreement, textile and apparel  
 4 goods classifiable as goods put up in sets for retail sale  
 5 as provided for in General Rule of Interpretation 3 of the  
 6 Harmonized System shall not be considered to be origi-  
 7 nating goods unless each of the goods in the set is an origi-  
 8 nating good or the total value of the nonoriginating goods  
 9 in the set does not exceed 10 percent of the value of the  
 10 set determined for purposes of assessing customs duties.

11       (m) APPLICATION AND INTERPRETATION.—In this  
 12 section:

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

15           (2) Any cost or value referred to in this section  
 16 shall be recorded and maintained in accordance with  
 17 the generally accepted accounting principles applica-  
 18 ble in the territory of the country in which the good  
 19 is produced (whether Chile or the United States).

20       (n) DEFINITIONS.—In this section:

21           (1) ADJUSTED VALUE.—The term “adjusted  
 22 value” means the value determined in accordance  
 23 with articles 1 through 8, article 15, and the cor-  
 24 responding interpretive notes of the Agreement on  
 25 Implementation of Article VII of the General Agree-

1       ment on Tariffs and Trade 1994 referred to in sec-  
2       tion 101(d)(8) of the Uruguay Round Agreements  
3       Act, except that such value may be adjusted to ex-  
4       clude any costs, charges, or expenses incurred for  
5       transportation, insurance, and related services inci-  
6       dent to the international shipment of the merchan-  
7       dise from the country of exportation to the place of  
8       importation.

9           (2) FUNGIBLE GOODS OR FUNGIBLE MATE-  
10       RIALS.—The terms “fungible goods” and “fungible  
11       materials” mean goods or materials, as the case may  
12       be, that are interchangeable for commercial purposes  
13       and the properties of which are essentially identical.

14          (3) GENERALLY ACCEPTED ACCOUNTING PRIN-  
15       CIPLES.—The term “generally accepted accounting  
16       principles” means the principles, rules, and proce-  
17       dures, including both broad and specific guidelines,  
18       that define the accounting practices accepted in the  
19       territory of Chile or the United States, as the case  
20       may be.

21          (4) GOODS WHOLLY OBTAINED OR PRODUCED  
22       ENTIRELY IN THE TERRITORY OF CHILE, THE  
23       UNITED STATES, OR BOTH.—The term “goods whol-  
24       ly obtained or produced entirely in the territory of  
25       Chile, the United States, or both” means—

1 (A) mineral goods extracted in the terri-  
2 tory of Chile, the United States, or both;

3 (B) vegetable goods, as such goods are de-  
4 fined in the Harmonized System, harvested in  
5 the territory of Chile, the United States, or  
6 both;

7 (C) live animals born and raised in the ter-  
8 ritory of Chile, the United States, or both;

9 (D) goods obtained from hunting, trap-  
10 ping, or fishing in the territory of Chile, the  
11 United States, or both;

12 (E) goods (fish, shellfish, and other marine  
13 life) taken from the sea by vessels registered or  
14 recorded with Chile or the United States and  
15 flying the flag of that country;

16 (F) goods produced on board factory ships  
17 from the goods referred to in subparagraph  
18 (E), if such factory ships are registered or re-  
19 corded with Chile or the United States and fly  
20 the flag of that country;

21 (G) goods taken by Chile or the United  
22 States or a person of Chile or the United States  
23 from the seabed or beneath the seabed outside  
24 territorial waters, if Chile or the United States  
25 has rights to exploit such seabed;

1           (H) goods taken from outer space, if the  
2           goods are obtained by Chile or the United  
3           States or a person of Chile or the United States  
4           and not processed in the territory of a country  
5           other than Chile or the United States;

6           (I) waste and scrap derived from—

7                   (i) production in the territory of Chile,  
8                   the United States, or both; or

9                   (ii) used goods collected in the terri-  
10                  tory of Chile, the United States, or both,  
11                  if such goods are fit only for the recovery  
12                  of raw materials;

13           (J) recovered goods derived in the territory  
14           of Chile or the United States from used goods,  
15           and used in the territory of that country in the  
16           production of remanufactured goods; and

17           (K) goods produced in the territory of  
18           Chile, the United States, or both, exclusively—

19                   (i) from goods referred to in any of  
20                   subparagraphs (A) through (I), or

21                   (ii) from the derivatives of goods re-  
22                   ferred to in clause (i),  
23           at any stage of production.

1           (5) HARMONIZED SYSTEM.—The term “Har-  
2       monized System” means the Harmonized Com-  
3       modity Description and Coding System.

4           (6) INDIRECT MATERIAL.—The term “indirect  
5       material” means a good used in the production, test-  
6       ing, or inspection of a good but not physically incor-  
7       porated into the good, or a good used in the mainte-  
8       nance of buildings or the operation of equipment as-  
9       sociated with the production of a good, including—

10               (A) fuel and energy;

11               (B) tools, dies, and molds;

12               (C) spare parts and materials used in the  
13       maintenance of equipment or buildings;

14               (D) lubricants, greases, compounding ma-  
15       terials, and other materials used in production  
16       or used to operate equipment or buildings;

17               (E) gloves, glasses, footwear, clothing,  
18       safety equipment, and supplies;

19               (F) equipment, devices, and supplies used  
20       for testing or inspecting the good;

21               (G) catalysts and solvents; and

22               (H) any other goods that are not incor-  
23       porated into the good but the use of which in  
24       the production of the good can reasonably be  
25       demonstrated to be a part of that production.

1           (7) MATERIAL.—The term “material” means a  
2           good that is used in the production of another good,  
3           including a part, ingredient, or indirect material.

4           (8) MATERIAL THAT IS SELF-PRODUCED.—The  
5           term “material that is self-produced” means a mate-  
6           rial that is an originating good produced by a pro-  
7           ducer of a good and used in the production of that  
8           good.

9           (9) NONORIGINATING GOOD OR NONORIGI-  
10          NATING MATERIAL.—The terms “nonoriginating  
11          good” and “nonoriginating material” mean a good  
12          or material, as the case may be, that does not qual-  
13          ify as an originating good under this section.

14          (10) PACKING MATERIALS AND CONTAINERS  
15          FOR SHIPMENT.—The term “packing materials and  
16          containers for shipment” means the goods used to  
17          protect a good during its transportation, and does  
18          not include the packaging materials and containers  
19          in which a good is packaged for retail sale.

20          (11) PREFERENTIAL TARIFF TREATMENT.—  
21          The term “preferential tariff treatment” means the  
22          customs duty rate that is applicable to an origi-  
23          nating good pursuant to chapter 3 of the Agree-  
24          ment.

1           (12) PRODUCER.—The term “producer” means  
2           a person who engages in the production of a good  
3           in the territory of Chile or the United States.

4           (13) PRODUCTION.—The term “production”  
5           means growing, mining, harvesting, fishing, raising,  
6           trapping, hunting, manufacturing, processing, as-  
7           sembling, or disassembling a good.

8           (14) RECOVERED GOODS.—

9           (A) IN GENERAL.—The term “recovered  
10          goods” means materials in the form of indi-  
11          vidual parts that are the result of—

12                   (i) the complete disassembly of used  
13                   goods into individual parts; and

14                   (ii) the cleaning, inspecting, testing,  
15                   or other processing of those parts as nec-  
16                   essary for improvement to sound working  
17                   condition by one or more of the processes  
18                   described in subparagraph (B), in order  
19                   for such parts to be assembled with other  
20                   parts, including other parts that have un-  
21                   dergone the processes described in this  
22                   paragraph, in the production of a remanu-  
23                   factured good.

24           (B) PROCESSES.—The processes referred  
25          to in subparagraph (A)(ii) are welding, flame



1           spraying, surface machining, knurling, plating,  
2           sleeving, and rewinding.

3           (15) REMANUFACTURED GOOD.—The term “re-  
4           manufactured good” means an industrial good as-  
5           sembled in the territory of Chile or the United  
6           States, that is listed in Annex 4.18 of the Agree-  
7           ment, and—

8                   (A) is entirely or partially comprised of re-  
9                   covered goods;

10                   (B) has the same life expectancy and  
11                   meets the same performance standards as a  
12                   new good; and

13                   (C) enjoys the same factory warranty as  
14                   such a new good.

15           (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

18                           (A) the provisions set out in Annex 4.1 of  
19                           the Agreement; and

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

23           (2) MODIFICATIONS.—

24                   (A) IN GENERAL.—Subject to the consulta-  
25                   tion and layover provisions of section 103(a),

1 the President may proclaim modifications to the  
2 provisions proclaimed under the authority of  
3 paragraph (1)(A), other than provisions of  
4 chapters 50 through 63 of the HTS, as in-  
5 cluded in Annex 4.1 of the Agreement.

6 (B) ADDITIONAL PROCLAMATIONS.—Not-  
7 withstanding subparagraph (A), and subject to  
8 the consultation and layover provisions of sec-  
9 tion 103(a), the President may proclaim—

10 (i) modifications to the provisions pro-  
11 claimed under the authority of paragraph  
12 (1)(A) that are necessary to implement an  
13 agreement with Chile pursuant to article  
14 3.20(5) of the Agreement; and

15 (ii) before the 1st anniversary of the  
16 date of the enactment of this Act, modi-  
17 fications to correct any typographical, cler-  
18 ical, or other nonsubstantive technical  
19 error regarding the provisions of chapters  
20 50 through 63 of the HTS, as included in  
21 Annex 4.1 of the Agreement.

22 **SEC. 203. DRAWBACK.**

23 (a) DEFINITION OF A GOOD SUBJECT TO CHILE FTA  
24 DRAWBACK.—For purposes of this Act and the amend-  
25 ments made by subsection (b), the term “good subject to

1 Chile FTA drawback” means any imported good other  
2 than the following:

3 (1) A good entered under bond for transpor-  
4 tation and exportation to Chile.

5 (2)(A) A good exported to Chile in the same  
6 condition as when imported into the United States.

7 (B) For purposes of subparagraph (A)—

8 (i) processes such as testing, cleaning, re-  
9 packing, inspecting, sorting, or marking a good,  
10 or preserving it in its same condition, shall not  
11 be considered to change the condition of the  
12 good; and

13 (ii) if a good described in subparagraph  
14 (A) is commingled with fungible goods and ex-  
15 ported in the same condition, the origin of the  
16 good for the purposes of subsection (j)(1) of  
17 section 313 of the Tariff Act of 1930 (19  
18 U.S.C. 1313(j)(1)) may be determined on the  
19 basis of the inventory methods provided for in  
20 the regulations implementing this title.

21 (3) A good—

22 (A) that is—

23 (i) deemed to be exported from the  
24 United States;

1                   (ii) used as a material in the produc-  
2                   tion of another good that is deemed to be  
3                   exported to Chile; or

4                   (iii) substituted for by a good of the  
5                   same kind and quality that is used as a  
6                   material in the production of another good  
7                   that is deemed to be exported to Chile; and  
8                   (B) that is delivered—

9                   (i) to a duty-free shop;

10                  (ii) for ship's stores or supplies for a  
11                  ship or aircraft; or

12                  (iii) for use in a project undertaken  
13                  jointly by the United States and Chile and  
14                  destined to become the property of the  
15                  United States.

16                  (4) A good exported to Chile for which a refund  
17                  of customs duties is granted by reason of—

18                         (A) the failure of the good to conform to  
19                         sample or specification; or

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

22                  (5) A good that qualifies under the rules of ori-  
23                  gin set out in section 202 that is—

24                         (A) exported to Chile;

1 (B) used as a material in the production of  
2 another good that is exported to Chile; or

3 (C) substituted for by a good of the same  
4 kind and quality that is used as a material in  
5 the production of another good that is exported  
6 to Chile.

7 (b) CONSEQUENTIAL AMENDMENTS.—

8 (1) BONDED MANUFACTURING WAREHOUSES.—

9 Section 311 of the Tariff Act of 1930 (19 U.S.C.  
10 1311) is amended by adding at the end the following  
11 new paragraph:

12 “No article manufactured in a bonded warehouse  
13 from materials that are goods subject to Chile FTA draw-  
14 back, as defined in section 203(a) of the United States-  
15 Chile Free Trade Agreement Implementation Act, may be  
16 withdrawn from warehouse for exportation to Chile with-  
17 out assessment of a duty on the materials in their condi-  
18 tion and quantity, and at their weight, at the time of im-  
19 portation into the United States. The duty shall be paid  
20 before the 61st day after the date of exportation, except  
21 that the duty may be waived or reduced by—

22 “(1) 100 percent during the 8-year period be-  
23 ginning on January 1, 2004;

24 “(2) 75 percent during the 1-year period begin-  
25 ning on January 1, 2012;

1 “(3) 50 percent during the 1-year period begin-  
2 ning on January 1, 2013; and

3 “(4) 25 percent during the 1-year period begin-  
4 ning on January 1, 2014.”.

5 (2) BONDED SMELTING AND REFINING WARE-  
6 HOUSES.—Section 312 of the Tariff Act of 1930 (19  
7 U.S.C. 1312) is amended—

8 (A) in paragraph (1) of subsection (b), by  
9 striking “except that” and all that follows  
10 through subparagraph (B) and inserting the  
11 following: “except that—

12 “(A) in the case of a withdrawal for expor-  
13 tation of such a product to a NAFTA country,  
14 as defined in section 2(4) of the North Amer-  
15 ican Free Trade Agreement Implementation  
16 Act, if any of the imported metal-bearing mate-  
17 rials are goods subject to NAFTA drawback, as  
18 defined in section 203(a) of that Act, the duties  
19 on the materials shall be paid, and the charges  
20 against the bond canceled, before the 61st day  
21 after the date of exportation; but upon the pres-  
22 entation, before such 61st day, of satisfactory  
23 evidence of the amount of any customs duties  
24 paid to the NAFTA country on the product, the  
25 duties on the materials may be waived or re-

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

3                   “(i) the total amount of customs du-  
4                   ties owed on the materials on importation  
5                   into the United States, or

6                   “(ii) the total amount of customs du-  
7                   ties paid to the NAFTA country on the  
8                   product, and

9                   “(B) in the case of a withdrawal for expor-  
10                  tation of such a product to Chile, if any of the  
11                  imported metal-bearing materials are goods  
12                  subject to Chile FTA drawback, as defined in  
13                  section 203(a) of the United States-Chile Free  
14                  Trade Agreement Implementation Act, the du-  
15                  ties on the materials shall be paid, and the  
16                  charges against the bond canceled, before the  
17                  61st day after the date of exportation, except  
18                  that the duties may be waived or reduced by—

19                           “(i) 100 percent during the 8-year pe-  
20                           riod beginning on January 1, 2004,

21                           “(ii) 75 percent during the 1-year pe-  
22                           riod beginning on January 1, 2012,

23                           “(iii) 50 percent during the 1-year pe-  
24                           riod beginning on January 1, 2013, and

1 “(iv) 25 percent during the 1-year pe-  
2 riod beginning on January 1, 2014, or”;

3 (B) in paragraph (4) of subsection (b), by  
4 striking “except that” and all that follows  
5 through subparagraph (B) and inserting the  
6 following: “except that—

7 “(A) in the case of a withdrawal for expor-  
8 tation of such a product to a NAFTA country,  
9 as defined in section 2(4) of the North Amer-  
10 ican Free Trade Agreement Implementation  
11 Act, if any of the imported metal-bearing mate-  
12 rials are goods subject to NAFTA drawback, as  
13 defined in section 203(a) of that Act, the duties  
14 on the materials shall be paid, and the charges  
15 against the bond canceled, before the 61st day  
16 after the date of exportation; but upon the pres-  
17 entation, before such 61st day, of satisfactory  
18 evidence of the amount of any customs duties  
19 paid to the NAFTA country on the product, the  
20 duties on the materials may be waived or re-  
21 duced (subject to section 508(b)(2)(B)) in an  
22 amount that does not exceed the lesser of—

23 “(i) the total amount of customs du-  
24 ties owed on the materials on importation  
25 into the United States, or



1 “(ii) the total amount of customs du-  
2 ties paid to the NAFTA country on the  
3 product, and

4 “(B) in the case of a withdrawal for expor-  
5 tation of such a product to Chile, if any of the  
6 imported metal-bearing materials are goods  
7 subject to Chile FTA drawback, as defined in  
8 section 203(a) of the United States-Chile Free  
9 Trade Agreement Implementation Act, the du-  
10 ties on the materials shall be paid, and the  
11 charges against the bond canceled, before the  
12 61st day after the date of exportation, except  
13 that the duties may be waived or reduced by—

14 “(i) 100 percent during the 8-year pe-  
15 riod beginning on January 1, 2004,

16 “(ii) 75 percent during the 1-year pe-  
17 riod beginning on January 1, 2012,

18 “(iii) 50 percent during the 1-year pe-  
19 riod beginning on January 1, 2013, and

20 “(iv) 25 percent during the 1-year pe-  
21 riod beginning on January 1, 2014, or”;

22 and

23 (C) in subsection (d), in the matter pre-  
24 ceding paragraph (1), by striking “except that”  
25 and all that follows through the end of para-

1 graph (2) and inserting the following: “except  
2 that—

3 “(1) in the case of a withdrawal for exportation  
4 to a NAFTA country, as defined in section 2(4) of  
5 the North American Free Trade Agreement Imple-  
6 mentation Act, if any of the imported metal-bearing  
7 materials are goods subject to NAFTA drawback, as  
8 defined in section 203(a) of that Act, charges  
9 against the bond shall be paid before the 61st day  
10 after the date of exportation; but upon the presen-  
11 tation, before such 61st day, of satisfactory evidence  
12 of the amount of any customs duties paid to the  
13 NAFTA country on the product, the bond shall be  
14 credited (subject to section 508(b)(2)(B)) in an  
15 amount not to exceed the lesser of—

16 “(A) the total amount of customs duties  
17 paid or owed on the materials on importation  
18 into the United States, or

19 “(B) the total amount of customs duties  
20 paid to the NAFTA country on the product;  
21 and

22 “(2) in the case of a withdrawal for exportation  
23 to Chile, if any of the imported metal-bearing mate-  
24 rials are goods subject to Chile FTA drawback, as  
25 defined in section 203(a) of the United States-Chile

1 Free Trade Agreement Implementation Act, charges  
2 against the bond shall be paid before the 61st day  
3 after the date of exportation, and the bond shall be  
4 credited in an amount equal to—

5 “(A) 100 percent of the total amount of  
6 customs duties paid or owed on the materials  
7 on importation into the United States during  
8 the 8-year period beginning on January 1,  
9 2004,

10 “(B) 75 percent of the total amount of  
11 customs duties paid or owed on the materials  
12 on importation into the United States during  
13 the 1-year period beginning on January 1,  
14 2012,

15 “(C) 50 percent of the total amount of  
16 customs duties paid or owed on the materials  
17 on importation into the United States during  
18 the 1-year period beginning on January 1,  
19 2013, and

20 “(D) 25 percent of the total amount of  
21 customs duties paid or owed on the materials  
22 on importation into the United States during  
23 the 1-year period beginning on January 1,  
24 2014.”.

1           (3) DRAWBACK.—Section 313 of the Tariff Act  
2 of 1930 (19 U.S.C. 1313) is amended—

3           (A) in paragraph (4) of subsection (j)—

4                 (i) by striking “(4)” and inserting  
5 “(4)(A)”; and

6                 (ii) by adding at the end the following  
7 new subparagraph:

8           “(B) Beginning on January 1, 2015, the expor-  
9 tation to Chile of merchandise that is fungible with  
10 and substituted for imported merchandise, other  
11 than merchandise described in paragraphs (1)  
12 through (5) of section 203(a) of the United States-  
13 Chile Free Trade Agreement Implementation Act,  
14 shall not constitute an exportation for purposes of  
15 paragraph (2). The preceding sentence shall not be  
16 construed to permit the substitution of unused draw-  
17 back under paragraph (2) of this subsection with re-  
18 spect to merchandise described in paragraph (2) of  
19 section 203(a) of the United States-Chile Free  
20 Trade Agreement Implementation Act.”;

21           (B) in subsection (n)—

22                 (i) by striking “(n)” and inserting the  
23 following:

24           “(n) REFUNDS, WAIVERS, OR REDUCTIONS UNDER  
25 CERTAIN FREE TRADE AGREEMENTS.—”;

1 (ii) in paragraph (1)—

2 (I) by striking “; and” at the end  
3 of subparagraph (B);

4 (II) by striking the period at the  
5 end of subparagraph (C) and insert-  
6 ing “; and”; and

7 (III) by adding at the end the  
8 following new subparagraph:

9 “(D) the term ‘good subject to Chile FTA  
10 drawback’ has the meaning given that term in sec-  
11 tion 203(a) of the United States-Chile Free Trade  
12 Agreement Implementation Act.”; and

13 (iii) by adding the following new para-  
14 graph at the end:

15 “(4)(A) For purposes of subsections (a), (b), (f), (h),  
16 (j)(2), (p), and (q), if an article that is exported to Chile  
17 is a good subject to Chile FTA drawback, no customs du-  
18 ties on the good may be refunded, waived, or reduced, ex-  
19 cept as provided in subparagraph (B).

20 “(B) The customs duties referred to in subparagraph  
21 (A) may be refunded, waived, or reduced by—

22 “(i) 100 percent during the 8-year period begin-  
23 ning on January 1, 2004;

24 “(ii) 75 percent during the 1-year period begin-  
25 ning on January 1, 2012;

1           “(iii) 50 percent during the 1-year period begin-  
2           ning on January 1, 2013; and

3           “(iv) 25 percent during the 1-year period begin-  
4           ning on January 1, 2014.”; and

5           (C) in subsection (o)—

6                   (i) by striking “(o)” and inserting the  
7           following:

8           “(o) SPECIAL RULES FOR CERTAIN VESSELS AND  
9           IMPORTED MATERIALS.—”; and

10                   (ii) by adding at the end the following  
11           new paragraphs:

12           “(3) For purposes of subsection (g), if—

13                   “(A) a vessel is built for the account and own-  
14           ership of a resident of Chile or the Government of  
15           Chile, and

16                   “(B) imported materials that are used in the  
17           construction and equipment of the vessel are goods  
18           subject to Chile FTA drawback, as defined in sec-  
19           tion 203(a) of the United States-Chile Free Trade  
20           Agreement Implementation Act,

21           no customs duties on such materials may be refunded,  
22           waived, or reduced, except as provided in paragraph (4).

23           “(4) The customs duties referred to in paragraph (3)  
24           may be refunded, waived or reduced by—

1           “(A) 100 percent during the 8-year period be-  
2           ginning on January 1, 2004;

3           “(B) 75 percent during the 1-year period begin-  
4           ning on January 1, 2012;

5           “(C) 50 percent during the 1-year period begin-  
6           ning on January 1, 2013; and

7           “(D) 25 percent during the 1-year period begin-  
8           ning on January 1, 2014.”.

9           (4) MANIPULATION IN WAREHOUSE.—Section  
10          562 of the Tariff Act of 1930 (19 U.S.C. 1562) is  
11          amended—

12                 (A) in paragraph (3), by striking “to a  
13                 NAFTA country” and inserting “to Chile, to a  
14                 NAFTA country,”;

15                 (B) by striking “and” at the end of para-  
16                 graph (4)(B);

17                 (C) by striking the period at the end of  
18                 paragraph (5) and inserting “; and”; and

19                 (D) by inserting after paragraph (5) the  
20                 following:

21                 “(6)(A) without payment of duties for expor-  
22                 tation to Chile, if the merchandise is of a kind de-  
23                 scribed in any of paragraphs (1) through (5) of sec-  
24                 tion 203(a) of the United States-Chile Free Trade  
25                 Agreement Implementation Act; and

1           “(B) for exportation to Chile if the merchandise  
2 consists of goods subject to Chile FTA drawback, as  
3 defined in section 203(a) of the United States-Chile  
4 Free Trade Agreement Implementation Act, except  
5 that—

6           “(i) the merchandise may not be with-  
7 drawn from warehouse without assessment of a  
8 duty on the merchandise in its condition and  
9 quantity, and at its weight, at the time of with-  
10 drawal from the warehouse with such additions  
11 to, or deductions from, the final appraised value  
12 as may be necessary by reason of a change in  
13 condition, and

14           “(ii) duty shall be paid on the merchandise  
15 before the 61st day after the date of expor-  
16 tation, except that such duties may be waived  
17 or reduced by—

18           “(I) 100 percent during the 8-year pe-  
19 riod beginning on January 1, 2004,

20           “(II) 75 percent during the 1-year pe-  
21 riod beginning on January 1, 2012,

22           “(III) 50 percent during the 1-year  
23 period beginning on January 1, 2013, and

24           “(IV) 25 percent during the 1-year  
25 period beginning on January 1, 2014.”.



1           (5) FOREIGN TRADE ZONES.—Section 3(a) of  
2     the Act of June 18, 1934 (commonly known as the  
3     “Foreign Trade Zones Act”; 19 U.S.C. 81e(a)) is  
4     amended by striking the end period and inserting  
5     the following: “: *Provided further*, That no merchan-  
6     dise that consists of goods subject to Chile FTA  
7     drawback, as defined in section 203(a) of the United  
8     States-Chile Free Trade Agreement Implementation  
9     Act, that is manufactured or otherwise changed in  
10    condition shall be exported to Chile without an as-  
11    sessment of a duty on the merchandise in its condi-  
12    tion and quantity, and at its weight, at the time of  
13    its exportation (or if the privilege in the first proviso  
14    to this subsection was requested, an assessment of  
15    a duty on the merchandise in its condition and  
16    quantity, and at its weight, at the time of its admis-  
17    sion into the zone) and the payment of the assessed  
18    duty before the 61st day after the date of expor-  
19    tation of the article, except that the customs duty  
20    may be waived or reduced by (1) 100 percent during  
21    the 8-year period beginning on January 1, 2004; (2)  
22    75 percent during the 1-year period beginning on  
23    January 1, 2012; (3) 50 percent during the 1-year  
24    period beginning on January 1, 2013; and (4) 25

1       percent during the 1-year period beginning on Janu-  
 2       ary 1, 2014.”.

3       (c) INAPPLICABILITY TO COUNTERVAILING AND  
 4       ANTIDUMPING DUTIES.—Nothing in this section or the  
 5       amendments made by this section shall be considered to  
 6       authorize the refund, waiver, or reduction of counter-  
 7       vailing duties or antidumping duties imposed on an im-  
 8       ported good.

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

10       Section 13031(b) of the Consolidated Omnibus Budg-  
 11       et Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is  
 12       amended by inserting after paragraph (11) the following:

13       “(12) No fee may be charged under subsection (a)  
 14       (9) or (10) with respect to goods that qualify as origi-  
 15       nating goods under section 202 of the United States-Chile  
 16       Free Trade Agreement Implementation Act. Any service  
 17       for which an exemption from such fee is provided by rea-  
 18       son of this paragraph may not be funded with money con-  
 19       tained in the Customs User Fee Account.”.

20       **SEC. 205. DISCLOSURE OF INCORRECT INFORMATION; DE-**  
 21                               **NIAL OF PREFERENTIAL TARIFF TREAT-**  
 22                               **MENT; FALSE CERTIFICATES OF ORIGIN.**

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

1 (1) in subsection (c)—

2 (A) by redesignating paragraph (6) as  
3 paragraph (7); and

4 (B) by inserting after paragraph (5) the  
5 following new paragraph:

6 “(6) PRIOR DISCLOSURE REGARDING CLAIMS  
7 UNDER THE UNITED STATES-CHILE FREE TRADE  
8 AGREEMENT.—An importer shall not be subject to  
9 penalties under subsection (a) for making an incor-  
10 rect claim that a good qualifies as an originating  
11 good under section 202 of the United States-Chile  
12 Free Trade Agreement Implementation Act if the  
13 importer, in accordance with regulations issued by  
14 the Secretary of the Treasury, voluntarily makes a  
15 corrected declaration and pays any duties owing.”;  
16 and

17 (2) by adding at the end the following new sub-  
18 section:

19 “(g) FALSE CERTIFICATIONS OF ORIGIN UNDER THE  
20 UNITED STATES-CHILE FREE TRADE AGREEMENT.—

21 “(1) IN GENERAL.—Subject to paragraph (2),  
22 it is unlawful for any person to certify falsely, by  
23 fraud, gross negligence, or negligence, in a Chile  
24 FTA Certificate of Origin (as defined in section  
25 508(f)(1)(B) of this Act that a good exported from

1 the United States qualifies as an originating good  
2 under the rules of origin set out in section 202 of  
3 the United States-Chile Free Trade Agreement Im-  
4 plementation Act. The procedures and penalties of  
5 this section that apply to a violation of subsection  
6 (a) also apply to a violation of this subsection.

7 “(2) IMMEDIATE AND VOLUNTARY DISCLOSURE  
8 OF INCORRECT INFORMATION.—No penalty shall be  
9 imposed under this subsection if, immediately after  
10 an exporter or producer that issued a Chile FTA  
11 Certificate of Origin has reason to believe that such  
12 certificate contains or is based on incorrect informa-  
13 tion, the exporter or producer voluntarily provides  
14 written notice of such incorrect information to every  
15 person to whom the certificate was issued.

16 “(3) EXCEPTION.—A person may not be consid-  
17 ered to have violated paragraph (1) if—

18 “(A) the information was correct at the  
19 time it was provided in a Chile FTA Certificate  
20 of Origin but was later rendered incorrect due  
21 to a change in circumstances; and

22 “(B) the person immediately and volun-  
23 tarily provides written notice of the change in  
24 circumstances to all persons to whom the per-  
25 son provided the certificate.”.

1 (b) DENIAL OF PREFERENTIAL TARIFF TREAT-  
2 MENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C.  
3 1514) is amended by adding at the end the following new  
4 subsection:

5 “(g) DENIAL OF PREFERENTIAL TARIFF TREAT-  
6 MENT UNDER UNITED STATES-CHILE FREE TRADE  
7 AGREEMENT.—If the Bureau of Customs and Border Pro-  
8 tection or the Bureau of Immigration and Customs En-  
9 forcement finds indications of a pattern of conduct by an  
10 importer of false or unsupported representations that  
11 goods qualify under the rules of origin set out in section  
12 202 of the United States-Chile Free Trade Agreement Im-  
13 plementation Act, the Bureau of Customs and Border Pro-  
14 tection, in accordance with regulations issued by the Sec-  
15 retary of the Treasury, may deny preferential tariff treat-  
16 ment under the United States-Chile Free Trade Agree-  
17 ment to entries of identical goods imported by that person  
18 until the person establishes to the satisfaction of the Bu-  
19 reau of Customs and Border Protection that representa-  
20 tions of that person are in conformity with such section  
21 202.”.

22 **SEC. 206. RELIQUIDATION OF ENTRIES.**

23 Subsection (d) of section 520 of the Tariff Act of  
24 1930 (19 U.S.C. 1520(d)) is amended—

1           (1) by striking “(d)” and inserting the fol-  
 2       lowing:

3       “(d) GOODS QUALIFYING UNDER FREE TRADE  
 4       AGREEMENT RULES OF ORIGIN.—”;

5           (2) in the matter preceding paragraph (1), by  
 6       inserting “or section 202 of the United States-Chile  
 7       Free Trade Agreement Implementation Act” after  
 8       “Act”;

9           (3) in paragraph (1), by striking “those” and  
 10      inserting “the applicable”; and

11          (4) in paragraph (2), by inserting before the  
 12      semicolon “, or other certificates of origin, as the  
 13      case may be”.

14   **SEC. 207. RECORDKEEPING REQUIREMENTS.**

15      Section 508 of the Tariff Act of 1930 (19 U.S.C.  
 16   1508) is amended—

17          (1) by striking the heading of subsection (b)  
 18      and inserting the following: “EXPORTATIONS TO  
 19      NAFTA COUNTRIES.—”; and

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

21      “(f) CERTIFICATES OF ORIGIN FOR GOODS EX-  
 22      PORTED UNDER THE UNITED STATES-CHILE FREE  
 23      TRADE AGREEMENT.—

24          “(1) DEFINITIONS.—In this subsection:

1           “(A) RECORDS AND SUPPORTING DOCU-  
2           MENTS.—The term ‘records and supporting  
3           documents’ means, with respect to an exported  
4           good under paragraph (2), records and docu-  
5           ments related to the origin of the good,  
6           including—

7                   “(i) the purchase, cost, and value of,  
8                   and payment for, the good;

9                   “(ii) if applicable, the purchase, cost,  
10                  and value of, and payment for, all mate-  
11                  rials, including recovered goods, used in  
12                  the production of the good; and

13                  “(iii) if applicable, the production of  
14                  the good in the form in which it was ex-  
15                  ported.

16           “(B) CHILE FTA CERTIFICATE OF ORI-  
17           GIN.—The term ‘Chile FTA Certificate of Ori-  
18           gin’ means the certification, established under  
19           article 4.13 of the United States-Chile Free  
20           Trade Agreement, that a good qualifies as an  
21           originating good under such Agreement.

22           “(2) EXPORTS TO CHILE.—Any person who  
23           completes and issues a Chile FTA Certificate of Ori-  
24           gin for a good exported from the United States shall  
25           make, keep, and, pursuant to rules and regulations

1 promulgated by the Secretary of the Treasury,  
2 render for examination and inspection all records  
3 and supporting documents related to the origin of  
4 the good (including the Certificate or copies thereof).

5 “(3) RETENTION PERIOD.—Records and sup-  
6 porting documents shall be kept by the person who  
7 issued a Chile FTA Certificate of Origin for at least  
8 5 years after the date on which the certificate was  
9 issued.

10 “(g) PENALTIES.—Any person who fails to retain  
11 records and supporting documents required by subsection  
12 (f) or the regulations issued to implement that subsection  
13 shall be liable for the greater of—

14 “(1) a civil penalty not to exceed \$10,000; or

15 “(2) the general record keeping penalty that ap-  
16 plies under the customs laws of the United States.”.

17 **SEC. 208. ENFORCEMENT OF TEXTILE AND APPAREL RULES**  
18 **OF ORIGIN.**

19 (a) ACTION DURING VERIFICATION.—If the Sec-  
20 retary of the Treasury requests the Government of Chile  
21 to conduct a verification pursuant to article 3.21 of the  
22 Agreement for purposes of determining that—

23 (1) an exporter or producer in Chile is com-  
24 plying with applicable customs laws, regulations, and



1 procedures regarding trade in textile and apparel  
2 goods, or

3 (2) claims that textile or apparel goods exported  
4 or produced by such exporter or producer—

5 (A) qualify as originating goods under sec-  
6 tion 202 of this Act, or

7 (B) are goods of Chile,  
8 are accurate,

9 the President may direct the Secretary to take appropriate  
10 action described in subsection (b) while the verification is  
11 being conducted.

12 (b) APPROPRIATE ACTION DESCRIBED.—Appropriate  
13 action under subsection (a) includes—

14 (1) suspension of liquidation of entries of textile  
15 and apparel goods exported or produced by the per-  
16 son that is the subject of the verification, in a case  
17 in which the request for verification was based on a  
18 reasonable suspicion of unlawful activity related to  
19 such goods; and

20 (2) publication of the name of the person that  
21 is the subject of the verification.

22 (c) ACTION WHEN INFORMATION IS INSUFFI-  
23 CIENT.—If the Secretary of the Treasury determines that  
24 the information obtained within 12 months after making  
25 a request for a verification under subsection (a) is insuffi-

1 cient to make a determination under subsection (a), the  
2 President may direct the Secretary to take appropriate ac-  
3 tion described in subsection (d) until such time as the Sec-  
4 retary receives information sufficient to make a deter-  
5 mination under subsection (a) or until such earlier date  
6 as the President may direct.

7 (d) APPROPRIATE ACTION DESCRIBED.—Appro-  
8 priate action under subsection (c) includes—

9 (1) publication of the identity of the person  
10 that is the subject of the verification;

11 (2) denial of preferential tariff treatment under  
12 the Agreement to any textile or apparel goods ex-  
13 ported or produced by the person that is the subject  
14 of the verification; and

15 (3) denial of entry into the United States of  
16 any textile or apparel goods exported or produced by  
17 the person that is the subject of the verification.

18 **SEC. 209. CONFORMING AMENDMENTS.**

19 Section 508(b)(2)(B)(i)(I) of the Tariff Act of 1930  
20 (19 U.S.C. 1508(b)(2)(B)(i)(I)) is amended—

21 (1) by striking “the last paragraph of section  
22 311” and inserting “the eleventh paragraph of sec-  
23 tion 311”; and

1           (2) by striking “the last proviso to section  
2       3(a)” and inserting “the proviso preceding the last  
3       proviso to section 3(a)”.

4   **SEC. 210. REGULATIONS.**

5       The Secretary of the Treasury shall prescribe such  
6       regulations as may be necessary to carry out—

7           (1) subsections (a) through (n) of section 202,  
8       and sections 203 and 204;

9           (2) amendments made by the sections referred  
10      to in paragraph (1); and

11          (3) proclamations issued under section 202(o).

12                   **TITLE III—RELIEF FROM**  
13                   **IMPORTS**

14   **SEC. 301. DEFINITIONS.**

15      In this title:

16          (1) COMMISSION.—The term “Commission”  
17      means the United States International Trade Com-  
18      mission.

19          (2) CHILEAN ARTICLE.—The term “Chilean ar-  
20      ticle” means an article that qualifies as an origi-  
21      nating good under section 202(a) of this Act.

22          (3) CHILEAN TEXTILE OR APPAREL ARTICLE.—  
23      The term “Chilean textile or apparel article” means  
24      an article—

1 (A) that is listed in the Annex to the  
2 Agreement on Textiles and Clothing referred to  
3 in section 101(d)(4) of the Uruguay Round  
4 Agreements Act (19 U.S.C. 3511(d)(4)); and  
5 (B) that is a Chilean article.

6 **Subtitle A—Relief From Imports**  
7 **Benefiting From the Agreement**

8 **SEC. 311. COMMENCING OF ACTION FOR RELIEF.**

9 (a) FILING OF PETITION.—A petition requesting ac-  
10 tion under this subtitle for the purpose of adjusting to  
11 the obligations of the United States under the Agreement  
12 may be filed with the Commission by an entity, including  
13 a trade association, firm, certified or recognized union, or  
14 group of workers, that is representative of an industry.  
15 The Commission shall transmit a copy of any petition filed  
16 under this subsection to the United States Trade Rep-  
17 resentative.

18 (b) INVESTIGATION AND DETERMINATION.—Upon  
19 the filing of a petition under subsection (a), the Commis-  
20 sion, unless subsection (d) applies, shall promptly initiate  
21 an investigation to determine whether, as a result of the  
22 reduction or elimination of a duty provided for under the  
23 Agreement, a Chilean article is being imported into the  
24 United States in such increased quantities, in absolute  
25 terms or relative to domestic production, and under such

1 conditions that imports of the Chilean article constitute  
2 a substantial cause of serious injury or threat thereof to  
3 the domestic industry producing an article that is like, or  
4 directly competitive with, the imported article.

5 (c) APPLICABLE PROVISIONS.—The following provi-  
6 sions of section 202 of the Trade Act of 1974 (19 U.S.C.  
7 2252) apply with respect to any investigation initiated  
8 under subsection (b):

9 (1) Paragraphs (1)(B) and (3) of subsection  
10 (b).

11 (2) Subsection (c).

12 (3) Subsection (i).

13 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No  
14 investigation may be initiated under this section with re-  
15 spect to any Chilean article if, after the date that the  
16 Agreement enters into force, import relief has been pro-  
17 vided with respect to that Chilean article under this sub-  
18 title, or if, at the time the petition is filed, the article is  
19 subject to import relief under chapter 1 of title II of the  
20 Trade Act of 1974.

21 **SEC. 312. COMMISSION ACTION ON PETITION.**

22 (a) DETERMINATION.—Not later than 120 days after  
23 the date on which an investigation is initiated under sec-  
24 tion 311(b) with respect to a petition, the Commission  
25 shall make the determination required under that section.

1       (b) APPLICABLE PROVISIONS.—For purposes of this  
2 subtitle, the provisions of paragraphs (1), (2), and (3) of  
3 section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
4 1330(d) (1), (2), and (3)) shall be applied with respect  
5 to determinations and findings made under this section  
6 as if such determinations and findings were made under  
7 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

8       (c) ADDITIONAL FINDING AND RECOMMENDATION IF  
9 DETERMINATION AFFIRMATIVE.—If the determination  
10 made by the Commission under subsection (a) with respect  
11 to imports of an article is affirmative, or if the President  
12 may consider a determination of the Commission to be an  
13 affirmative determination as provided for under paragraph  
14 (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
15 1330(d)), the Commission shall find, and recommend to  
16 the President in the report required under subsection (d),  
17 the amount of import relief that is necessary to remedy  
18 or prevent the injury found by the Commission in the de-  
19 termination and to facilitate the efforts of the domestic  
20 industry to make a positive adjustment to import competi-  
21 tion. The import relief recommended by the Commission  
22 under this subsection shall be limited to the relief de-  
23 scribed in section 313(c). Only those members of the Com-  
24 mission who voted in the affirmative under subsection (a)  
25 are eligible to vote on the proposed action to remedy or

1 prevent the injury found by the Commission. Members of  
2 the Commission who did not vote in the affirmative may  
3 submit, in the report required under subsection (d), sepa-  
4 rate views regarding what action, if any, should be taken  
5 to remedy or prevent the injury.

6 (d) REPORT TO PRESIDENT.—Not later than the  
7 date that is 30 days after the date on which a determina-  
8 tion is made under subsection (a) with respect to an inves-  
9 tigation, the Commission shall submit to the President a  
10 report that includes—

11 (1) the determination made under subsection  
12 (a) and an explanation of the basis for the deter-  
13 mination;

14 (2) if the determination under subsection (a) is  
15 affirmative, any findings and recommendations for  
16 import relief made under subsection (c) and an ex-  
17 planation of the basis for each recommendation; and

18 (3) any dissenting or separate views by mem-  
19 bers of the Commission regarding the determination  
20 and recommendation referred to in paragraphs (1)  
21 and (2).

22 (e) PUBLIC NOTICE.—Upon submitting a report to  
23 the President under subsection (d), the Commission shall  
24 promptly make public such report (with the exception of  
25 information which the Commission determines to be con-

1 fidential) and shall cause a summary thereof to be pub-  
2 lished in the Federal Register.

3 **SEC. 313. PROVISION OF RELIEF.**

4 (a) IN GENERAL.—Not later than the date that is  
5 30 days after the date on which the President receives the  
6 report of the Commission in which the Commission's de-  
7 termination under section 312(a) is affirmative, or which  
8 contains a determination under section 312(a) that the  
9 President considers to be affirmative under paragraph (1)  
10 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
11 1330(d)(1)), the President, subject to subsection (b), shall  
12 provide relief from imports of the article that is the subject  
13 of such determination to the extent that the President de-  
14 termines necessary to remedy or prevent the injury found  
15 by the Commission and to facilitate the efforts of the do-  
16 mestic industry to make a positive adjustment to import  
17 competition.

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

22 (c) NATURE OF RELIEF.—

23 (1) IN GENERAL.—The import relief that the  
24 President is authorized to provide under this section  
25 with respect to imports of an article is as follows:



1 (A) The suspension of any further reduc-  
2 tion provided for under Annex 3.3 of the Agree-  
3 ment in the duty imposed on such article.

4 (B) An increase in the rate of duty im-  
5 posed on such article to a level that does not  
6 exceed the lesser of—

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

10 (ii) the column 1 general rate of duty  
11 imposed under the HTS on like articles on  
12 the day before the date on which the  
13 Agreement enters into force.

14 (2) PROGRESSIVE LIBERALIZATION.—If the pe-  
15 riod for which import relief is provided under this  
16 section is greater than 1 year, the President shall  
17 provide for the progressive liberalization (described  
18 in article 8.2(2) of the Agreement) of such relief at  
19 regular intervals during the period of its application.

20 (d) PERIOD OF RELIEF.—

21 (1) IN GENERAL.—Subject to paragraph (2),  
22 the import relief that the President is authorized to  
23 provide under this section, including any extensions  
24 thereof, may not, in the aggregate, exceed 3 years.

25 (2) EXTENSION.—

1 (A) IN GENERAL.—If the initial period for  
2 any import relief provided under this section is  
3 less than 3 years, the President, after receiving  
4 an affirmative determination from the Commis-  
5 sion under subparagraph (B), may extend the  
6 effective period of any import relief provided  
7 under this section, subject to the limitation  
8 under paragraph (1), if the President deter-  
9 mines that—

10 (i) the import relief continues to be  
11 necessary to remedy or prevent serious in-  
12 jury and to facilitate adjustment; and

13 (ii) there is evidence that the industry  
14 is making a positive adjustment to import  
15 competition.

16 (B) ACTION BY COMMISSION.—(i) Upon a  
17 petition on behalf of the industry concerned,  
18 filed with the Commission not earlier than the  
19 date which is 9 months, and not later than the  
20 date which is 6 months, before the date on  
21 which any action taken under subsection (a) is  
22 to terminate, the Commission shall conduct an  
23 investigation to determine whether action under  
24 this section continues to be necessary to remedy  
25 or prevent serious injury and whether there is

1 evidence that the industry is making a positive  
2 adjustment to import competition.

3 (ii) The Commission shall publish notice of  
4 the commencement of any proceeding under  
5 this subparagraph in the Federal Register and  
6 shall, within a reasonable time thereafter, hold  
7 a public hearing at which the Commission shall  
8 afford interested parties and consumers an op-  
9 portunity to be present, to present evidence,  
10 and to respond to the presentations of other  
11 parties and consumers, and otherwise to be  
12 heard.

13 (iii) The Commission shall transmit to the  
14 President a report on its investigation and de-  
15 termination under this subparagraph not later  
16 than 60 days before the action under subsection  
17 (a) is to terminate, unless the President speci-  
18 fies a different date.

19 (e) RATE AFTER TERMINATION OF IMPORT RE-  
20 LIEF.—When import relief under this section is termi-  
21 nated with respect to an article—

22 (1) the rate of duty on that article after such  
23 termination and on or before December 31 of the  
24 year in which such termination occurs shall be the  
25 rate that, according to the Schedule of the United

1 States in Annex 3.3 of the Agreement for the staged  
 2 elimination of the tariff, would have been in effect  
 3 1 year after the provision of relief under subsection  
 4 (a); and

5 (2) the rate of duty for that article after De-  
 6 cember 31 of the year in which termination occurs  
 7 shall be, at the discretion of the President, either—

8 (A) the applicable rate of duty for that ar-  
 9 ticle set out in the Schedule of the United  
 10 States in Annex 3.3 of the Agreement; or

11 (B) the rate of duty resulting from the  
 12 elimination of the tariff in equal annual stages  
 13 ending on the date set out in the United States  
 14 Schedule in Annex 3.3 of the Agreement for the  
 15 elimination of the tariff.

16 (f) ARTICLES EXEMPT FROM RELIEF.—No import  
 17 relief may be provided under this section on any article  
 18 subject to import relief under chapter 1 of title II of the  
 19 Trade Act of 1974.

20 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**

21 (a) GENERAL RULE.—No import relief may be pro-  
 22 vided under this subtitle after the date that is 10 years  
 23 after the date on which the Agreement enters into force.

24 (b) EXCEPTION.—If an article for which relief is pro-  
 25 vided under this subtitle is an article for which the period

1 for tariff elimination, set out in the Schedule of the United  
 2 States to Annex 3.3 of the Agreement, is 12 years, no  
 3 relief under this subtitle may be provided for that article  
 4 after the date that is 12 years after the date on which  
 5 the Agreement enters into force.

6 **SEC. 315. COMPENSATION AUTHORITY.**

7 For purposes of section 123 of the Trade Act of 1974  
 8 (19 U.S.C. 2133), any import relief provided by the Presi-  
 9 dent under section 313 shall be treated as action taken  
 10 under chapter 1 of title II of such Act.

11 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

12 Section 202(a)(8) of the Trade Act of 1974 (19  
 13 U.S.C. 2252(a)(8)) is amended in the first sentence—

14 (1) by striking “and”; and

15 (2) by inserting before the period at the end “,  
 16 and title III of the United States-Chile Free Trade  
 17 Agreement Implementation Act”.

18 **Subtitle B—Textile and Apparel**  
 19 **Safeguard Measures**

20 **SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

21 (a) IN GENERAL.—A request under this subtitle for  
 22 the purpose of adjusting to the obligations of the United  
 23 States under the Agreement may be filed with the Presi-  
 24 dent by an interested party. Upon the filing of a request,  
 25 the President shall review the request to determine, from

1 information presented in the request, whether to com-  
2 mence consideration of the request.

3 (b) PUBLICATION OF REQUEST.—If the President de-  
4 termines that the request under subsection (a) provides  
5 the information necessary for the request to be considered,  
6 the President shall cause to be published in the Federal  
7 Register a notice of commencement of consideration of the  
8 request, and notice seeking public comments regarding the  
9 request. The notice shall include the request and the dates  
10 by which comments and rebuttals must be received.

11 **SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

12 (a) DETERMINATION.—

13 (1) IN GENERAL.—If a positive determination is  
14 made under section 321(b), the President shall de-  
15 termine whether, as a result of the elimination of a  
16 duty under the Agreement, a Chilean textile or ap-  
17 parel article is being imported into the United States  
18 in such increased quantities, in absolute terms or  
19 relative to the domestic market for that article, and  
20 under such conditions as to cause serious damage,  
21 or actual threat thereof, to a domestic industry pro-  
22 ducing an article that is like, or directly competitive  
23 with, the imported article.

24 (2) SERIOUS DAMAGE.—In making a deter-  
25 mination under paragraph (1), the President—

1 (A) shall examine the effect of increased  
2 imports on the domestic industry, as reflected  
3 in changes in such relevant economic factors as  
4 output, productivity, utilization of capacity, in-  
5 ventories, market share, exports, wages, em-  
6 ployment, domestic prices, profits, and invest-  
7 ment, none of which is necessarily decisive; and

8 (B) shall not consider changes in tech-  
9 nology or consumer preference as factors sup-  
10 porting a determination of serious damage or  
11 actual threat thereof.

12 (b) PROVISION OF RELIEF.—

13 (1) IN GENERAL.—If a determination under  
14 subsection (a) is affirmative, the President may pro-  
15 vide relief from imports of the article that is the  
16 subject of such determination, as provided in para-  
17 graph (2), to the extent that the President deter-  
18 mines necessary to remedy or prevent the serious  
19 damage and to facilitate adjustment by the domestic  
20 industry.

21 (2) NATURE OF RELIEF.—The relief that the  
22 President is authorized to provide under this sub-  
23 section with respect to imports of an article is an in-  
24 crease in the rate of duty imposed on the article to  
25 a level that does not exceed the lesser of—

1 (A) the column 1 general rate of duty im-  
2 posed under the HTS on like articles at the  
3 time the import relief is provided; or

4 (B) the column 1 general rate of duty im-  
5 posed under the HTS on like articles on the  
6 day before the date on which the Agreement en-  
7 ters into force.

8 **SEC. 323. PERIOD OF RELIEF.**

9 (a) IN GENERAL.—The import relief that the Presi-  
10 dent is authorized to provide under section 322, including  
11 any extensions thereof, may not, in the aggregate, exceed  
12 3 years.

13 (b) EXTENSION.—If the initial period for any import  
14 relief provided under this section is less than 3 years, the  
15 President may extend the effective period of any import  
16 relief provided under this section, subject to the limitation  
17 set forth in subsection (a), if the President determines  
18 that—

19 (1) the import relief continues to be necessary  
20 to remedy or prevent serious damage and to facili-  
21 tate adjustment; and

22 (2) there is evidence that the industry is mak-  
23 ing a positive adjustment to import competition.



1 **SEC. 324. ARTICLES EXEMPT FROM RELIEF.**

2       The President may not provide import relief under  
3 this subtitle with respect to any article if import relief pre-  
4 viously has been provided under this subtitle with respect  
5 to that article.

6 **SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

7       When import relief under this subtitle is terminated  
8 with respect to an article, the rate of duty on that article  
9 shall be duty-free.

10 **SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

11       No import relief may be provided under this subtitle  
12 with respect to any article after the date that is 8 years  
13 after the date on which duties on the article are eliminated  
14 pursuant to the Agreement.

15 **SEC. 327. COMPENSATION AUTHORITY.**

16       For purposes of section 123 of the Trade Act of 1974  
17 (19 U.S.C. 2133), any import relief provided by the Presi-  
18 dent under this subtitle shall be treated as action taken  
19 under chapter 1 of title II of that Act.

20 **SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.**

21       The President may not release information which the  
22 President considers to be confidential business informa-  
23 tion unless the party submitting the confidential business  
24 information had notice, at the time of submission, that  
25 such information would be released by the President, or  
26 such party subsequently consents to the release of the in-

1 formation. To the extent business confidential information  
 2 is provided, a nonconfidential version of the information  
 3 shall also be provided, in which the business confidential  
 4 information is summarized or, if necessary, deleted.

## 5 **TITLE IV—TEMPORARY ENTRY** 6 **OF BUSINESS PERSONS**

### 7 **SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.**

8       Upon a basis of reciprocity secured by the Agree-  
 9 ment, an alien who is a national of Chile (and any spouse  
 10 or child (as defined in section 101(b)(1) of the Immigra-  
 11 tion and Nationality Act (8 U.S.C. 1101(b)(1)) of such  
 12 alien, if accompanying or following to join the alien) may,  
 13 if otherwise eligible for a visa and if otherwise admissible  
 14 into the United States under the Immigration and Nation-  
 15 ality Act (8 U.S.C. 1101 et seq.), be considered to be clas-  
 16 sifiable as a nonimmigrant under section 101(a)(15)(E)  
 17 of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely  
 18 for a purpose specified in clause (i) or (ii) of such section  
 19 101(a)(15)(E). For purposes of this section, the term “na-  
 20 tional” has the meaning given such term in article 14.9  
 21 of the Agreement.

### 22 **SEC. 402. NONIMMIGRANT PROFESSIONALS; LABOR ATTES-** 23 **TATIONS.**

24       (a) NONIMMIGRANT PROFESSIONALS.—

1           (1) DEFINITIONS.—Section 101(a)(15)(H)(i)(b)  
2       of the Immigration and Nationality Act (8 U.S.C.  
3       1101(a)(15)(H)(i)(b)) is amended by striking  
4       “212(n)(1), or (c)” and inserting “212(n)(1), or  
5       (b1) who is entitled to enter the United States under  
6       and in pursuance of the provisions of an agreement  
7       listed in section 214(g)(8)(A), who is engaged in a  
8       specialty occupation described in section 214(i)(3),  
9       and with respect to whom the Secretary of Labor de-  
10      termines and certifies to the Secretary of Homeland  
11      Security and the Secretary of State that the intend-  
12      ing employer has filed with the Secretary of Labor  
13      an attestation under section 212(t)(1), or (c)”.

14           (2) ADMISSION OF NONIMMIGRANTS.—Section  
15      214 of the Immigration and Nationality Act (8  
16      U.S.C. 1184) is amended—

17                   (A) in subsection (i)—

18                           (i) in paragraph (1), by striking “For  
19                           purposes” and inserting “Except as pro-  
20                           vided in paragraph (3), for purposes”; and

21                           (ii) by adding at the end the fol-  
22                           lowing:

23           “(3) For purposes of section 101(a)(15)(H)(i)(b1),  
24      the term ‘specialty occupation’ means an occupation that  
25      requires—

1           “(A) theoretical and practical application of a  
2           body of specialized knowledge; and

3           “(B) attainment of a bachelor’s or higher de-  
4           gree in the specific specialty (or its equivalent) as a  
5           minimum for entry into the occupation in the United  
6           States.”; and

7                       (B) in subsection (g), by adding at the end  
8           the following:

9           “(8)(A) The agreement referred to in section  
10       101(a)(15)(H)(i)(b1) is the United States-Chile Free  
11       Trade Agreement.

12           “(B)(i) The Secretary of Homeland Security shall es-  
13       tablish annual numerical limitations on approvals of initial  
14       applications by aliens for admission under section  
15       101(a)(15)(H)(i)(b1).

16           “(ii) The annual numerical limitations described in  
17       clause (i) shall not exceed 1,400 for nationals of Chile for  
18       any fiscal year. For purposes of this clause, the term ‘na-  
19       tional’ has the meaning given such term in article 14.9  
20       of the United States-Chile Free Trade Agreement.

21           “(iii) The annual numerical limitations described in  
22       clause (i) shall only apply to principal aliens and not to  
23       the spouses or children of such aliens.

24           “(iv) The annual numerical limitation described in  
25       paragraph (1)(A) is reduced by the amount of the annual

1 numerical limitations established under clause (i). How-  
2 ever, if a numerical limitation established under clause (i)  
3 has not been exhausted at the end of a given fiscal year,  
4 the Secretary of Homeland Security shall adjust upwards  
5 the numerical limitation in paragraph (1)(A) for that fis-  
6 cal year by the amount remaining in the numerical limita-  
7 tion under clause (i). Visas under section  
8 101(a)(15)(H)(i)(b) may be issued pursuant to such ad-  
9 justment within the first 45 days of the next fiscal year  
10 to aliens who had applied for such visas during the fiscal  
11 year for which the adjustment was made.

12 “(C) The period of authorized admission as a non-  
13 immigrant under section 101(a)(15)(H)(i)(b1) shall be 1  
14 year, and may be extended, but only in 1-year increments.  
15 After every second extension, the next following extension  
16 shall not be granted unless the Secretary of Labor had  
17 determined and certified to the Secretary of Homeland Se-  
18 curity and the Secretary of State that the intending em-  
19 ployer has filed with the Secretary of Labor an attestation  
20 under section 212(t)(1) for the purpose of permitting the  
21 nonimmigrant to obtain such extension.

22 “(D) The numerical limitation described in para-  
23 graph (1)(A) for a fiscal year shall be reduced by one for  
24 each alien granted an extension under subparagraph (C)

1 during such year who has obtained 5 or more consecutive  
2 prior extensions.”.

3 (b) LABOR ATTESTATIONS.—Section 212 of the Im-  
4 migration and Nationality Act (8 U.S.C. 1182) is  
5 amended—

6 (1) by redesignating the subsection (p) added  
7 by section 1505(f) of Public Law 106–386 (114  
8 Stat. 1526) as subsection (s); and

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

10 “(t)(1) No alien may be admitted or provided status  
11 as a nonimmigrant under section 101(a)(15)(H)(i)(b1) in  
12 an occupational classification unless the employer has filed  
13 with the Secretary of Labor an attestation stating the fol-  
14 lowing:

15 “(A) The employer—

16 “(i) is offering and will offer during the  
17 period of authorized employment to aliens ad-  
18 mitted or provided status under section  
19 101(a)(15)(H)(i)(b1) wages that are at least—

20 “(I) the actual wage level paid by the  
21 employer to all other individuals with simi-  
22 lar experience and qualifications for the  
23 specific employment in question; or

1 “(II) the prevailing wage level for the  
2 occupational classification in the area of  
3 employment,

4 whichever is greater, based on the best informa-  
5 tion available as of the time of filing the attes-  
6 tation; and

7 “(ii) will provide working conditions for  
8 such a nonimmigrant that will not adversely af-  
9 fect the working conditions of workers similarly  
10 employed.

11 “(B) There is not a strike or lockout in the  
12 course of a labor dispute in the occupational classi-  
13 fication at the place of employment.

14 “(C) The employer, at the time of filing the  
15 attestation—

16 “(i) has provided notice of the filing under  
17 this paragraph to the bargaining representative  
18 (if any) of the employer’s employees in the oc-  
19 cupational classification and area for which  
20 aliens are sought; or

21 “(ii) if there is no such bargaining rep-  
22 resentative, has provided notice of filing in the  
23 occupational classification through such meth-  
24 ods as physical posting in conspicuous locations  
25 at the place of employment or electronic notifi-

1 cation to employees in the occupational classi-  
2 fication for which nonimmigrants under section  
3 101(a)(15)(H)(i)(b1) are sought.

4 “(D) A specification of the number of workers  
5 sought, the occupational classification in which the  
6 workers will be employed, and wage rate and condi-  
7 tions under which they will be employed.

8 “(2)(A) The employer shall make available for public  
9 examination, within one working day after the date on  
10 which an attestation under this subsection is filed, at the  
11 employer’s principal place of business or worksite, a copy  
12 of each such attestation (and such accompanying docu-  
13 ments as are necessary).

14 “(B)(i) The Secretary of Labor shall compile, on a  
15 current basis, a list (by employer and by occupational clas-  
16 sification) of the attestations filed under this subsection.  
17 Such list shall include, with respect to each attestation,  
18 the wage rate, number of aliens sought, period of intended  
19 employment, and date of need.

20 “(ii) The Secretary of Labor shall make such list  
21 available for public examination in Washington, D.C.

22 “(C) The Secretary of Labor shall review an attesta-  
23 tion filed under this subsection only for completeness and  
24 obvious inaccuracies. Unless the Secretary of Labor finds  
25 that an attestation is incomplete or obviously inaccurate,



1 the Secretary of Labor shall provide the certification de-  
2 scribed in section 101(a)(15)(H)(i)(b1) within 7 days of  
3 the date of the filing of the attestation.

4 “(3)(A) The Secretary of Labor shall establish a  
5 process for the receipt, investigation, and disposition of  
6 complaints respecting the failure of an employer to meet  
7 a condition specified in an attestation submitted under  
8 this subsection or misrepresentation by the employer of  
9 material facts in such an attestation. Complaints may be  
10 filed by any aggrieved person or organization (including  
11 bargaining representatives). No investigation or hearing  
12 shall be conducted on a complaint concerning such a fail-  
13 ure or misrepresentation unless the complaint was filed  
14 not later than 12 months after the date of the failure or  
15 misrepresentation, respectively. The Secretary of Labor  
16 shall conduct an investigation under this paragraph if  
17 there is reasonable cause to believe that such a failure or  
18 misrepresentation has occurred.

19 “(B) Under the process described in subparagraph  
20 (A), the Secretary of Labor shall provide, within 30 days  
21 after the date a complaint is filed, for a determination as  
22 to whether or not a reasonable basis exists to make a find-  
23 ing described in subparagraph (C). If the Secretary of  
24 Labor determines that such a reasonable basis exists, the  
25 Secretary of Labor shall provide for notice of such deter-

1 mination to the interested parties and an opportunity for  
2 a hearing on the complaint, in accordance with section 556  
3 of title 5, United States Code, within 60 days after the  
4 date of the determination. If such a hearing is requested,  
5 the Secretary of Labor shall make a finding concerning  
6 the matter by not later than 60 days after the date of  
7 the hearing. In the case of similar complaints respecting  
8 the same applicant, the Secretary of Labor may consoli-  
9 date the hearings under this subparagraph on such com-  
10 plaints.

11 “(C)(i) If the Secretary of Labor finds, after notice  
12 and opportunity for a hearing, a failure to meet a condi-  
13 tion of paragraph (1)(B), a substantial failure to meet a  
14 condition of paragraph (1)(C) or (1)(D), or a misrepresen-  
15 tation of material fact in an attestation—

16 “(I) the Secretary of Labor shall notify the Sec-  
17 retary of State and the Secretary of Homeland Secu-  
18 rity of such finding and may, in addition, impose  
19 such other administrative remedies (including civil  
20 monetary penalties in an amount not to exceed  
21 \$1,000 per violation) as the Secretary of Labor de-  
22 termines to be appropriate; and

23 “(II) the Secretary of State or the Secretary of  
24 Homeland Security, as appropriate, shall not ap-  
25 prove petitions or applications filed with respect to

1       that employer under section 204, 214(c), or  
2       101(a)(15)(H)(i)(b1) during a period of at least 1  
3       year for aliens to be employed by the employer.

4       “(ii) If the Secretary of Labor finds, after notice and  
5       opportunity for a hearing, a willful failure to meet a condi-  
6       tion of paragraph (1), a willful misrepresentation of mate-  
7       rial fact in an attestation, or a violation of clause (iv)—

8               “(I) the Secretary of Labor shall notify the Sec-  
9       retary of State and the Secretary of Homeland Secu-  
10      rity of such finding and may, in addition, impose  
11      such other administrative remedies (including civil  
12      monetary penalties in an amount not to exceed  
13      \$5,000 per violation) as the Secretary of Labor de-  
14      termines to be appropriate; and

15              “(II) the Secretary of State or the Secretary of  
16      Homeland Security, as appropriate, shall not ap-  
17      prove petitions or applications filed with respect to  
18      that employer under section 204, 214(c), or  
19      101(a)(15)(H)(i)(b1) during a period of at least 2  
20      years for aliens to be employed by the employer.

21      “(iii) If the Secretary of Labor finds, after notice and  
22      opportunity for a hearing, a willful failure to meet a condi-  
23      tion of paragraph (1) or a willful misrepresentation of ma-  
24      terial fact in an attestation, in the course of which failure  
25      or misrepresentation the employer displaced a United

1 States worker employed by the employer within the period  
2 beginning 90 days before and ending 90 days after the  
3 date of filing of any visa petition or application supported  
4 by the attestation—

5 “(I) the Secretary of Labor shall notify the Sec-  
6 retary of State and the Secretary of Homeland Secu-  
7 rity of such finding and may, in addition, impose  
8 such other administrative remedies (including civil  
9 monetary penalties in an amount not to exceed  
10 \$35,000 per violation) as the Secretary of Labor de-  
11 termines to be appropriate; and

12 “(II) the Secretary of State or the Secretary of  
13 Homeland Security, as appropriate, shall not ap-  
14 prove petitions or applications filed with respect to  
15 that employer under section 204, 214(c), or  
16 101(a)(15)(H)(i)(b1) during a period of at least 3  
17 years for aliens to be employed by the employer.

18 “(iv) It is a violation of this clause for an employer  
19 who has filed an attestation under this subsection to in-  
20 timidate, threaten, restrain, coerce, blacklist, discharge, or  
21 in any other manner discriminate against an employee  
22 (which term, for purposes of this clause, includes a former  
23 employee and an applicant for employment) because the  
24 employee has disclosed information to the employer, or to  
25 any other person, that the employee reasonably believes

1 evidences a violation of this subsection, or any rule or reg-  
2 ulation pertaining to this subsection, or because the em-  
3 ployee cooperates or seeks to cooperate in an investigation  
4 or other proceeding concerning the employer's compliance  
5 with the requirements of this subsection or any rule or  
6 regulation pertaining to this subsection.

7       “(v) The Secretary of Labor and the Secretary of  
8 Homeland Security shall devise a process under which a  
9 nonimmigrant under section 101(a)(15)(H)(i)(b1) who  
10 files a complaint regarding a violation of clause (iv) and  
11 is otherwise eligible to remain and work in the United  
12 States may be allowed to seek other appropriate employ-  
13 ment in the United States for a period not to exceed the  
14 maximum period of stay authorized for such non-  
15 immigrant classification.

16       “(vi)(I) It is a violation of this clause for an employer  
17 who has filed an attestation under this subsection to re-  
18 quire a nonimmigrant under section 101(a)(15)(H)(i)(b1)  
19 to pay a penalty for ceasing employment with the employer  
20 prior to a date agreed to by the nonimmigrant and the  
21 employer. The Secretary of Labor shall determine whether  
22 a required payment is a penalty (and not liquidated dam-  
23 ages) pursuant to relevant State law.

24       “(II) If the Secretary of Labor finds, after notice and  
25 opportunity for a hearing, that an employer has committed

1 a violation of this clause, the Secretary of Labor may im-  
2 pose a civil monetary penalty of \$1,000 for each such vio-  
3 lation and issue an administrative order requiring the re-  
4 turn to the nonimmigrant of any amount paid in violation  
5 of this clause, or, if the nonimmigrant cannot be located,  
6 requiring payment of any such amount to the general fund  
7 of the Treasury.

8 “(vii)(I) It is a failure to meet a condition of para-  
9 graph (1)(A) for an employer who has filed an attestation  
10 under this subsection and who places a nonimmigrant  
11 under section 101(a)(15)(H)(i)(b1) designated as a full-  
12 time employee in the attestation, after the nonimmigrant  
13 has entered into employment with the employer, in non-  
14 productive status due to a decision by the employer (based  
15 on factors such as lack of work), or due to the non-  
16 immigrant’s lack of a permit or license, to fail to pay the  
17 nonimmigrant full-time wages in accordance with para-  
18 graph (1)(A) for all such nonproductive time.

19 “(II) It is a failure to meet a condition of paragraph  
20 (1)(A) for an employer who has filed an attestation under  
21 this subsection and who places a nonimmigrant under sec-  
22 tion 101(a)(15)(H)(i)(b1) designated as a part-time em-  
23 ployee in the attestation, after the nonimmigrant has en-  
24 tered into employment with the employer, in nonproduc-  
25 tive status under circumstances described in subclause (I),

1 to fail to pay such a nonimmigrant for such hours as are  
2 designated on the attestation consistent with the rate of  
3 pay identified on the attestation.

4 “(III) In the case of a nonimmigrant under section  
5 101(a)(15)(H)(i)(b1) who has not yet entered into employ-  
6 ment with an employer who has had approved an attesta-  
7 tion under this subsection with respect to the non-  
8 immigrant, the provisions of subclauses (I) and (II) shall  
9 apply to the employer beginning 30 days after the date  
10 the nonimmigrant first is admitted into the United States,  
11 or 60 days after the date the nonimmigrant becomes eligi-  
12 ble to work for the employer in the case of a nonimmigrant  
13 who is present in the United States on the date of the  
14 approval of the attestation filed with the Secretary of  
15 Labor.

16 “(IV) This clause does not apply to a failure to pay  
17 wages to a nonimmigrant under section  
18 101(a)(15)(H)(i)(b1) for nonproductive time due to non-  
19 work-related factors, such as the voluntary request of the  
20 nonimmigrant for an absence or circumstances rendering  
21 the nonimmigrant unable to work.

22 “(V) This clause shall not be construed as prohibiting  
23 an employer that is a school or other educational institu-  
24 tion from applying to a nonimmigrant under section  
25 101(a)(15)(H)(i)(b1) an established salary practice of the

1 employer, under which the employer pays to non-  
2 immigrants under section 101(a)(15)(H)(i)(b1) and  
3 United States workers in the same occupational classifica-  
4 tion an annual salary in disbursements over fewer than  
5 12 months, if—

6           “(aa) the nonimmigrant agrees to the com-  
7 pressed annual salary payments prior to the com-  
8 mencement of the employment; and

9           “(bb) the application of the salary practice to  
10 the nonimmigrant does not otherwise cause the non-  
11 immigrant to violate any condition of the non-  
12 immigrant’s authorization under this Act to remain  
13 in the United States.

14       “(VI) This clause shall not be construed as super-  
15 seding clause (viii).

16       “(viii) It is a failure to meet a condition of paragraph  
17 (1)(A) for an employer who has filed an attestation under  
18 this subsection to fail to offer to a nonimmigrant under  
19 section 101(a)(15)(H)(i)(b1), during the nonimmigrant’s  
20 period of authorized employment, benefits and eligibility  
21 for benefits (including the opportunity to participate in  
22 health, life, disability, and other insurance plans; the op-  
23 portunity to participate in retirement and savings plans;  
24 and cash bonuses and non-cash compensation, such as  
25 stock options (whether or not based on performance)) on



1 the same basis, and in accordance with the same criteria,  
2 as the employer offers to United States workers.

3 “(D) If the Secretary of Labor finds, after notice and  
4 opportunity for a hearing, that an employer has not paid  
5 wages at the wage level specified in the attestation and  
6 required under paragraph (1), the Secretary of Labor  
7 shall order the employer to provide for payment of such  
8 amounts of back pay as may be required to comply with  
9 the requirements of paragraph (1), whether or not a pen-  
10 alty under subparagraph (C) has been imposed.

11 “(E) The Secretary of Labor may, on a case-by-case  
12 basis, subject an employer to random investigations for  
13 a period of up to 5 years, beginning on the date on which  
14 the employer is found by the Secretary of Labor to have  
15 committed a willful failure to meet a condition of para-  
16 graph (1) or to have made a willful misrepresentation of  
17 material fact in an attestation. The authority of the Sec-  
18 retary of Labor under this subparagraph shall not be con-  
19 strued to be subject to, or limited by, the requirements  
20 of subparagraph (A).

21 “(F) Nothing in this subsection shall be construed  
22 as superseding or preempting any other enforcement-re-  
23 lated authority under this Act (such as the authorities  
24 under section 274B), or any other Act.

25 “(4) For purposes of this subsection:

1           “(A) The term ‘area of employment’ means the  
2           area within normal commuting distance of the work-  
3           site or physical location where the work of the non-  
4           immigrant under section 101(a)(15)(H)(i)(b1) is or  
5           will be performed. If such worksite or location is  
6           within a Metropolitan Statistical Area, any place  
7           within such area is deemed to be within the area of  
8           employment.

9           “(B) In the case of an attestation with respect  
10          to one or more nonimmigrants under section  
11          101(a)(15)(H)(i)(b1) by an employer, the employer  
12          is considered to ‘displace’ a United States worker  
13          from a job if the employer lays off the worker from  
14          a job that is essentially the equivalent of the job for  
15          which the nonimmigrant or nonimmigrants is or are  
16          sought. A job shall not be considered to be essen-  
17          tially equivalent of another job unless it involves es-  
18          sentially the same responsibilities, was held by a  
19          United States worker with substantially equivalent  
20          qualifications and experience, and is located in the  
21          same area of employment as the other job.

22          “(C)(i) The term ‘lays off’, with respect to a  
23          worker—

24                 “(I) means to cause the worker’s loss of  
25                 employment, other than through a discharge for

1 inadequate performance, violation of workplace  
2 rules, cause, voluntary departure, voluntary re-  
3 tirement, or the expiration of a grant or con-  
4 tract; but

5 “(II) does not include any situation in  
6 which the worker is offered, as an alternative to  
7 such loss of employment, a similar employment  
8 opportunity with the same employer at equiva-  
9 lent or higher compensation and benefits than  
10 the position from which the employee was dis-  
11 charged, regardless of whether or not the em-  
12 ployee accepts the offer.

13 “(ii) Nothing in this subparagraph is intended  
14 to limit an employee’s rights under a collective bar-  
15 gaining agreement or other employment contract.

16 “(D) The term ‘United States worker’ means  
17 an employee who—

18 “(i) is a citizen or national of the United  
19 States; or

20 “(ii) is an alien who is lawfully admitted  
21 for permanent residence, is admitted as a ref-  
22 ugee under section 207 of this title, is granted  
23 asylum under section 208, or is an immigrant  
24 otherwise authorized, by this Act or by the Sec-  
25 retary of Homeland Security, to be employed.”.

1       (c) SPECIAL RULE FOR COMPUTATION OF PRE-  
2 VAILING WAGE.—Section 212(p)(1) of the Immigration  
3 and Nationality Act (8 U.S.C. 1182(p)(1)) is amended by  
4 striking “(n)(1)(A)(i)(II) and (a)(5)(A)” and inserting  
5 “(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)”.

6       (d) FEE.—

7           (1) IN GENERAL.—Section 214(c) of the Immi-  
8 gration and Nationality Act (8 U.S.C. 1184(c)) is  
9 amended by adding at the end the following:

10       “(11)(A) Subject to subparagraph (B), the Secretary  
11 of Homeland Security or the Secretary of State, as appro-  
12 priate, shall impose a fee on an employer who has filed  
13 an attestation described in section 212(t)—

14           “(i) in order that an alien may be initially  
15 granted nonimmigrant status described in section  
16 101(a)(15)(H)(i)(b1); or

17           “(ii) in order to satisfy the requirement of the  
18 second sentence of subsection (g)(8)(C) for an alien  
19 having such status to obtain certain extensions of  
20 stay.

21       “(B) The amount of the fee shall be the same as the  
22 amount imposed by the Secretary of Homeland Security  
23 under paragraph (9), except that if such paragraph does  
24 not authorize such Secretary to impose any fee, no fee  
25 shall be imposed under this paragraph.

1       “(C) Fees collected under this paragraph shall be de-  
 2       posited in the Treasury in accordance with section  
 3       286(s).”.

4               (2) USE OF FEE.—Section 286(s)(1) of the Im-  
 5       migration and Nationality Act (8 U.S.C. 1356(s)(1))  
 6       is amended by striking “section 214(c)(9).” and in-  
 7       serting “paragraphs (9) and (11) of section  
 8       214(c).”.

9       **SEC. 403. LABOR DISPUTES.**

10       Section 214(j) of the Immigration and Nationality  
 11       Act (8 U.S.C. 1184(j)) is amended—

12               (1) by striking “(j)” and inserting “(j)(1)”;

13               (2) by striking “this subsection” each place  
 14       such term appears and inserting “this paragraph”;  
 15       and

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

17       “(2) Notwithstanding any other provision of this Act  
 18       except section 212(t)(1), and subject to regulations pro-  
 19       mulgated by the Secretary of Homeland Security, an alien  
 20       who seeks to enter the United States under and pursuant  
 21       to the provisions of an agreement listed in subsection  
 22       (g)(8)(A), and the spouse and children of such an alien  
 23       if accompanying or following to join the alien, may be de-  
 24       nied admission as a nonimmigrant under subparagraph  
 25       (E), (L), or (H)(i)(b1) of section 101(a)(15) if there is

1 in progress a labor dispute in the occupational classifica-  
2 tion at the place or intended place of employment, unless  
3 such alien establishes, pursuant to regulations promul-  
4 gated by the Secretary of Homeland Security after con-  
5 sultation with the Secretary of Labor, that the alien's  
6 entry will not affect adversely the settlement of the labor  
7 dispute or the employment of any person who is involved  
8 in the labor dispute. Notice of a determination under this  
9 paragraph shall be given as may be required by such  
10 agreement.”.

11 **SEC. 404. CONFORMING AMENDMENTS.**

12 Section 214 of the Immigration and Nationality Act  
13 (8 U.S.C. 1184) is amended—

14 (1) in subsection (b), by striking “(other than  
15 a nonimmigrant described in subparagraph (H)(i),  
16 (L), or (V) of section 101(a)(15))” and inserting  
17 “(other than a nonimmigrant described in subpara-  
18 graph (L) or (V) of section 101(a)(15), and other  
19 than a nonimmigrant described in any provision of  
20 section 101(a)(15)(H)(i) except subclause (b1) of  
21 such section)”;

22 (2) in subsection (c)(1), by striking “section  
23 101(a)(15)(H), (L), (O), or (P)(i)” and inserting  
24 “subparagraph (H), (L), (O), or (P)(i) of section

1       101(a)(15) (excluding nonimmigrants under section  
 2       101(a)(15)(H)(i)(b1))”; and  
 3           (3) in subsection (h), by striking “(H)(i)” and  
 4       inserting “(H)(i)(b) or (c)”.

Passed the House of Representatives July 24, 2003.

Attest:

*Clerk.*