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UNITED STATES-CHILE FREE TRADE AGREEMENT IMPLEMENTATION ACT

JULY 29 (legislative day, JULY 21), 2003.—Ordered to be printed

Mr. GRASSLEY, from the Committee on Finance, and on behalf of Mr. HATCH, from the Committee on the Judiciary; filed the following

JOINT REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1416]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, and the Committee on the Judiciary, to which was jointly referred the bill (S. 1416) to implement the United States-Chile Free Trade Agreement, having considered the same, reports thereon and recommends that the bill do pass.

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I. REPORTS AND OTHER MATERIALS OF THE COMMITTEES

This joint report compiles the reports and other materials of the Committees to which S. 1416, the bill to approve and implement the United States-Chile Free Trade Agreement, was jointly referred.

PART I. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the bill (S. 1416) to approve and implement the United States-Chile Free Trade Agreement, having considered the same, reports favorably thereon and recommends that the bill do pass.

A. SUMMARY OF CONGRESSIONAL CONSIDERATION OF THE UNITED STATES-CHILE FREE TRADE AGREEMENT

1. Background

At the first Summit of the Americas in December 1994, President William J. Clinton pledged that Chile would become the fourth member of the North American Free Trade Agreement. In April 1998, during President Clinton's state visit to Chile, efforts to expand the North American Free Trade Agreement were halted in favor of the establishment of a United States-Chile Joint Commission on Trade and Investment. In November 2000, President Clinton and President Ricardo Lagos of Chile agreed to launch bilateral negotiations for a United States-Chile Free Trade Agreement. The United States and Chile initiated negotiations on a Free Trade Agreement on December 6, 2000. On August 6, 2002, President George W. Bush signed the Trade Act of 2002, which provides expedited procedures for the consideration of legislation implementing trade agreements that meet objectives under the Act. After 14 negotiating rounds, the United States and Chile concluded negotiations in December 2002. On January 29, 2003, President Bush notified Congress of his intention to sign the Agreement. On June 6, 2003, the Agreement was signed in Miami, Florida, by U.S. Trade Representative Robert B. Zoellick and Chilean Foreign Minister Soledad Alvear.

2. Trade Promotion Authority Procedures In General

The requirements for congressional consideration of the United States-Chile Free Trade Agreement (the Agreement) under expedited procedures (known as Trade Promotion Authority (TPA) Procedures) are set forth in sections 2103 through 2106 of the Bipartisan Trade Promotion Authority Act (the Act) of 2002 and section 151 of the Trade Act of 1974.

Section 2103 of the Act authorizes the President, prior to June 1, 2005 (or prior to June 1, 2007, if trade authority procedures are extended under section 2103(c) of the Act), to enter into reciprocal trade agreements with foreign countries to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. The purpose of section 2103 procedures is to provide the means to achieve U.S. negotiating objectives set forth under section 2102 of the Act in international trade negotiations.

3. Notification Prior to Negotiations

Under section 2104(a)(1) of the Trade Act of 2002, the President must provide written notice to the Congress at least 90 calendar days before initiating negotiations. Section 2104(a)(2) requires the President, before and after submission of the notice, to consult regarding the negotiations with the relevant Committees of Congress and the Congressional Oversight Group established under section 2107 of the Act. Section 2106 exempts Chile from the prenegotiation notification and consultation requirements of section 2014(a) only. Section 2106(b)(2), however, requires the President, as soon as feasible after the enactment of the Trade Act of 2002, to notify Congress of, and consult with Congress about, the negotiations. On October 1, 2002, President George W. Bush notified the Congress of the United States ongoing negotiations with Chile on a free trade agreement.

4. Notification of Intent To Enter Into an Agreement

Under section 2105(a)(1)(A) of the Act, the President is required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into an agreement. On January 29, 2003, President George W. Bush notified Congress of his intention to enter into the United States-Chile Free Trade Agreement.

Section 2105(a)(1)(B) requires the President, within 60 days of signing an agreement, to submit to Congress a preliminary list of existing laws that the President considers would be required to bring the United States into compliance with the agreement. On June 6, 2003, the United States Trade Representative signed the Agreement. On July 3, 2003, the President transmitted to Congress a description of changes in existing law required to comply with the Agreement.

5. Development of the Implementing Legislation

Under TPA Procedures, the Congress and the Administration traditionally work together to produce the legislation to implement the agreement. The drafting occurs in informal meetings of the Committees with jurisdiction over the laws that must be amended to implement the agreement. At times this process may also include one or more House-Senate conference meetings. The objective is to produce one bill to be transmitted by the House and Senate Leadership to the President as the recommended legislation to implement the trade agreement. The drafting is done in close consultation with the Administration in an effort to ensure that the legislation faithfully implements the agreement and that the Administration's subsequent formal submission is, to the greatest degree possible, consistent with the legislation recommended by the Congress.

In meetings in June and July 2003, the Senate Committee on Finance and the House Committee on Ways and Means considered and made recommendations for the implementing bills. Other Committees of the Senate and House also considered provisions of the implementing legislation within their respective jurisdictions.

6. Formal Submission of the Agreement and Legislation

When the President formally submits a trade agreement to the Congress under section 2105 of the Act, the President must include in the submission the final legal text of the agreement, together with implementing legislation, a statement of administrative action (describing regulatory and other changes that are necessary or appropriate to implement the agreement), a statement setting forth the reasons of the President regarding how and to what extent the agreement makes progress in achieving the applicable policies, purposes, priorities, and objectives set forth in the Act, and a statement setting forth the reasons of the President regarding how the agreement serves the interests of U.S. commerce.

The implementing legislation is introduced in both Houses of Congress on the day it is submitted by the President and is referred to Committees with jurisdiction over its provisions. President George W. Bush transmitted the final text of the United States-Chile Free Trade Agreement, along with implementing legislation, a Statement of Administrative Action, and other supporting information, as required under section 2105 of the Trade Act of 2002, to the Congress on July 15, 2003. The legislation was introduced that same day in both the House and the Senate.

To qualify for TPA Procedures, the implementing bill itself must contain provisions formally approving the agreement and the statement of administrative action. Further, the implementing bill must contain only those provisions necessary or appropriate to implement the agreement. The implementing bill reported here—which approves the United States-Chile Free Trade Agreement and the Statement of Administrative Action and contains a number of additional provisions necessary or appropriate to implement the United States-Chile Free Trade Agreement into U.S. law—was referred to the Senate Committee on Finance and the Senate Committee on the Judiciary.

7. Committee and Floor Consideration

When the requirements of the Act are satisfied, implementing revenue bills, such as the United States-Chile Free Trade Agreement Implementation Act (Implementation Act), are subject to the legislative procedures of section 151 of the Trade Act of 1974. The following schedule for Congressional consideration applies under these procedures:

(i) House Committees have up to 45 days in which to report the bill; any Committee which does not do so in that period will be automatically discharged from further consideration.

(ii) A vote on final passage by the House must occur on or before the 15th day after the Committees report or are discharged.

(iii) Senate Committees must act within 15 days of receiving the implementing revenue bill from the House or within 45 days of Senate introduction of the implementing bill, whichever is longer, or they will be discharged automatically.

(iv) The full Senate then must vote within 15 days.

Thus, the Congress has a maximum of 90 days to complete action on the bill, although the time period can be shortened.

Once the implementing bill has been formally submitted by the President and introduced, no amendments to the bill are in order in either House of Congress. Floor debate is limited in each House to no more than 20 hours.

The Senate Committee on Finance and the Senate Committee on the Judiciary ordered S. 1416, the United States-Chile Free Trade Agreement Implementation Act, favorably reported on July 17, 2003.

B. GENERAL BACKGROUND

The United States and Chile initiated negotiations on a free trade agreement on December 6, 2000. After 14 negotiating rounds, negotiations were concluded in December 2002. On January 29, 2003, President Bush notified Congress of his intention to sign the Agreement. The Agreement was signed on June 6, 2003 in Miami, Florida, by United States Trade Representative Robert B. Zoellick and Chilean Foreign Minister Soledad Alvear. The United States-Chile Free Trade Agreement, along with the United States-Singapore Free Trade Agreement, is the first agreement to be submitted under TPA Procedures established by the Act.

1. United States-Chile Trade

In 2002, Chile was the United States' 34th largest export destination and 36th largest import contributor. By contrast, the United States is Chile's largest single-country trading partner, accounting for 20 percent of Chilean exports and 15 percent of its imports in 2002. The United States has experienced a merchandise trade deficit with Chile in recent years, after running merchandise trade surpluses from 1988 to 1999. In 2002, total bilateral merchandise trade was valued at $5.9 billion, with U.S. exports to Chile totaling $2.3 billion and U.S. imports from Chile totaling $3.6 billion. Two-way trade in agricultural, food, and fishery products between the United States and Chile in fiscal year 2002 totaled nearly $2.3 billion.

U.S. products exported to Chile are comprised predominantly of capital goods. These include: machinery (32 percent), particularly computers, office machinery, and industrial equipment such as gas turbines and bulldozers; electrical machinery (12 percent) including television and radio transmission apparatuses, telephone equipment, spare parts, integrated circuits, sound recording equipment and media; vehicles (8 percent) mostly trucks and passenger cars; and optical/medical instruments (5 percent). In recent years, U.S. export trends have exhibited a slowing in heavy transportation equipment and in computer and electronic equipment, but vehicle parts exports to Chile have increased.

The largest category of U.S. imports from Chile in 2002 consisted of agricultural products. This category accounts for more a large portion of imports followed by minerals and metals. Major imports from Chile included: copper articles (13 percent), mostly refined alloys; wood (16 percent), including various types of lumber; and beverages (4 percent), virtually all wine. Recent trends have seen an increase in imports of grapes, fish, wood products, apricots, peaches, plums, and with a steady level or slight decline in demand for copper and wine products relative to other goods.

2. Tariffs and Trade Agreements

Chile has bound most of its industrial tariffs at the World Trade Organization (WTO) at a maximum of 25 percent ad valorem. Some agricultural tariffs are bound at 31.5 percent ad valorem, and some commodities, including wheat, flour, vegetable oils, and sugar are subject to an additional variable rate, under a price band system. Most actual applied tariff rates are much lower; a uniform ad valorem rate of 6 percent has been applied on nearly all non-agricultural goods from January 1, 2003. In addition, Chile has negotiated free or preferential trade agreements with Canada, Mexico, the European Union, the Central American Common Market (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua), and as an associate member participates in the free trade area of Mercosur (Argentina, Brazil, Paraguay, and Uruguay. Bolivia is an associate member). Chile completed negotiations in March 2003 with the European Free Trade Area, which includes Iceland, Liechtenstein, Norway and Sweden.

LEADING U.S. EXPORTS TO CHILE, 1998–2002

[In thousands of dollars]

HTS 4-digit classification	1998	1999	2000	2001	2002
8471—Computers, data processing equipment	160,778	161,539	168,562	138,367	128,860
8431—Parts for heavy equipment and machinery	173,592	30,684	167,559	154,877	128,286
9880—Low value shipments	136,350	113,350	121,649	109,662	93,155
8473—Parts for computers and other office equipment	105,713	117,568	135,548	117,846	92,868
8525—Television and radio transmission and recording equipment	128,923	215,607	181,444	99,142	69,682
8704—Trucks, dump trucks	122,297	41,445	125,985	70,477	65,189
8411—Gas turbines, turbojets turbo-propellers and parts	18,383	50,370	39,208	36,017	62,635
8708—Motor vehicle parts	48,734	35,387	37,901	43,936	56,972
8703—Motor cars	64,758	31,979	46,761	41,982	45,039
2710—Petroleum oils	39,910	43,675	66,023	54,586	39,540
All other	2,742,320	1,939,014	2,091,967	1,956,222	1,561,832
Total	3,741,759	2,880,436	3,182,608	2,823,11	2,344,059

Note.—HTS=harmonized tariff schedule number
Source: U.S. International Trade Commission Dataweb.

LEADING U.S. IMPORTS FROM CHILE, 1998–2002

[in thousands of dollars]

HTS 4-digit classification	1998	1999	2000	2001	2002
0806—Grapes, raisins	280,404	312,784	396,012	383,378	464,077
0304—Fish fillets and fish meat (fresh, chilled or frozen)	247,082	263,524	377,051	395,736	422,853
7403—Unwrought refined copper and copper alloys	131,236	229,986	443,138	292,255	375,857
4409—Wood, continuously shaped (tongued, grooved, molded)	116,745	157,727	140,485	175,723	192,625
4407—Wood sawn or chipped lengthwise, sliced or peeled, more than 6mm thick	96,881	150,505	144,098	133,066	170,940
2204—Wine of fresh grapes, including fortified wine	116,241	116,546	134,294	137,379	136,890
2905—Acyclic alcohol and derivatives	34,239	45,737	65,647	123,793	135,654
9801—Exports of articles imported for repair or returned.	62,640	80,513	79,802	96,125	127,737
0809—Apricots, peaches, plums, nectarines, cherries	51,421	75,872	69,810	91,827	108,787
1005—Corn	54,499	58,566	81,901	84,530	82,245
All other	1,149,852	1,331,562	1,325,284	1,365,213	1,339,325

LEADING U.S. IMPORTS FROM CHILE, 1998–2002—Continued

[in thousands of dollars]

HTS 4-digit classification	1998	1999	2000	2001	2002
Total	2,341,240	2,823,322	3,257,520	3,279,027	3,556,991

Note.—HTS=harmonized tariff schedule number
Source: U.S. International Trade Commission Dataweb.

3. International Trade Commission Study

As part of the Congressional consultation process, the United States International Trade Commission (ITC) released a comprehensive study in June 2003 assessing the probable economic effects of the Agreement on the U.S. economy, providing both quantitative and qualitative estimates of the Agreement's probable effects. The study projected that by 2016, when the full effect of the tariff eliminations would be felt, U.S. exports to Chile would increase in a range between 18 percent and 52 percent; and U.S. imports would rise between 6 percent and 14 percent. The study notes that this would be very small relative to total U.S. trade and that the economy-wide effects on trade, production, and overall economic welfare would be small to negligible, although the impact would be significant in sectors with high initial trade barriers. This outcome was expected due to the fact that Chile is already a relatively open economy with a relatively small trade position with the United States. The ITC finding, however, serves as an estimate of confirmation, focusing largely on the implications of tariff reduction, which may be quantified, unlike changes in many non-tariff barriers.

The ITC investigation found that the FTA would have implications for most sectors of the U.S. economy, either with increased import competition from Chile, or increased export opportunities. Imports to the United States from Chile are likely to increase in textiles, apparel and leather goods, dairy, tobacco products and other crops. A general expansion in U.S. exports to Chile is expected, with the greatest increase in electronic and transportation equipment. Sectors with the highest initial trade barriers would see the largest impact.

C. OVERVIEW OF THE UNITED STATES-CHILE FREE TRADE AGREEMENT

1. The Agreement

The Agreement comprises an integrated set of reciprocal obligations that will eliminate barriers to trade between Chile and the United States in a manner that is consistent with Article XXIV of the General Agreements on Tariffs and Trade 1994 (GATT 1994) and Article V of the General Agreement on Trade in Services (GATS).

2. Chapters

Market Access.—The Agreement calls for the mutual elimination of all tariffs between the two countries within 12 years. More than 85 percent of bilateral trade in industrial and consumer products will become duty-free immediately upon the entry into force of the Agreement. The majority of remaining industrial and consumer products will become duty-free within 4 years, and all tariffs on these products will be phased out within 10 years. With regard to agriculture, tariffs on more than 75 percent of agricultural products will be eliminated within 4 years, and all tariffs on these products will be phased out over 12 years. Most basic textile products would be accorded immediate duty-free treatment by both Parties, with a few products given staged reductions and with shipments of some apparel goods, notably those of cotton or of man-made fibers, controlled by tariff preference levels. The Parties may consult to accelerate tariff elimination on goods. Chile agrees to eliminate its 50 percent surcharge on the importation of originating used goods. The Agreement also provides for the duty-free entry of commercial samples of negligible value, printed advertising materials, and goods reentered following repair or alteration. The Agreement provides for a phase-out of duty drawback and duty deferral programs over a 3 year period commencing 8 years after the Agreement enters into force.

The Agreement reaffirms and qualifies GATT commitments on import and export restrictions and allows either Party to ensure that a ban on trade with a non-Agreement party is not circumvented by the Agreement. Each Party is to ensure that administrative fees associated with imports and exports are commensurate with the service rendered, and that a current list of such fees is published. The United States agrees to eliminate the merchandise processing fee for originating goods from Chile. Export taxes are prohibited, except when the tax is also applied to domestic goods, and Chile agrees to phase out its luxury tax on automobiles in 4 years. The Parties agree to respect certain geographic indications on U.S. whiskey and certain Chilean alcoholic beverage products. A Committee on Trade in Goods is also established to promote trade in goods between the Parties, including through consultations on accelerating tariff elimination under the Agreement and other issues, as appropriate.

Agricultural Trade.—The Agreement's tariff schedules provide tariff-free treatment for about 75 percent of the agricultural products traded between the United States and Chile within 4 years. Tariffs and quotas on remaining products will be phased out over periods of up to 12 years with a special rule applying to trade in specified sugar products. With regard to these specified sugar products, each Party agrees that its access to the other's market under the Agreement is limited to the amount of its net trade surplus in these products. Protection for certain import-sensitive agricultural products will be provided using tariff-rate quotas (TRQs), tariff phase-outs, and agricultural safeguards. The special safeguards are price-based and will be implemented automatically using specified trigger prices.

The U.S. Schedule details the TRQ provisions (initial quota amount, annual rate of quota increase, tariff reduction schedule for over-quota quantities) that will apply to imports from Chile of beef, poultry, cheese, milk powder, butter, condensed milk, other dairy products, sugar, tobacco, avocados, and processed artichokes. The U.S. Schedule provides tariff phase-outs for the relevant agricultural products. Chilean products covered by the U.S. price-based agricultural safeguard include specified vegetables and fruit, various canned fruits, frozen concentrated orange juice, tomato products, and avocados.

The Agreement commits Chile to eliminate its price band mechanism as it relates to imports of wheat, wheat flour, vegetable oils, and sugar from the United States over a 12 year period. U.S. products subject to Chile's agricultural safeguard include certain meat products; broken, brown, and partially-milled rice; rice flour; and certain wheat products.

The Agreement eliminates the use of export subsidies on agricultural trade between both countries, but allows each country to respond if third countries use such subsidies to displace its sales in the other country's market. It commits each Party to recognize the other's beef grading systems. An exchange of letters, dated June 6, 2003, pledges both countries to urge their regulatory agencies to implement technical and scientific work dedicated to achieving market access to make the bilateral trade of poultry products of mutual benefit for both Parties.

Textiles and Apparel.—Chapter 3 of the Agreement establishes a specific bilateral safeguard mechanism for textiles and apparel goods. A Party may take emergency action with respect to a textile or apparel good benefiting from preferential tariff treatment under the Agreement if that good is being imported in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry. The emergency action authorized in the Agreement consists of an increase in the rate of duty on the good, to a level not to exceed the lesser of: the normal trade relations/most-favored-nation (NTR/MFN) applied rate of duty in effect at the time the action is taken; or, the NTR/MFN applied rate of duty in effect on the date of entry into force of the Agreement.

The importing Party may take an emergency action under Chapter 3 of the Agreement only following an investigation by its competent authorities. No emergency action may be maintained under this safeguard for a period exceeding 3 years, and no emergency action may be taken or maintained beyond the period ending 8 years after duties on a good have been eliminated pursuant to the Agreement. In addition, no emergency action may be taken by an importing Party against a particular textile or apparel good of the other Party more than once, and upon termination of an emergency action, the good will return to duty-free status.

The Party taking an emergency action must provide mutually agreed-upon trade liberalizing compensation in the form of concessions having substantially equivalent trade effects, or equivalent value, compared to the additional duties resulting from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties agree otherwise. If the Parties are unable to reach an agreement on compensation, the exporting Party may take tariff action having trade effects substantially equivalent to the trade effects of the emergency action taken under Chapter 3 of the Agreement. Such tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action shall apply such action only for the minimum period necessary to achieve substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.

Nothing in Chapter 3 of the Agreement shall be construed to limit a Party's right to restrain imports of textile and apparel goods in a manner consistent with the WTO Agreement on Textiles and Clothing or the WTO Agreement on Safeguards. However, a Party may not take or maintain an emergency action against a textile or apparel good that is subject, or becomes subject, to a safeguard measure that a Party imposes pursuant to domestic law in accordance with either such WTO agreement.

Rules of Origin.—This section provides the criteria for determining whether a good is an originating goods for purposes of the Agreement. Originating status is conferred: (1) when a good is wholly obtained or produced entirely in the territory of one or both of the Parties; (2) when a good is produced entirely in the territory of one or both Parties and each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification, and the good satisfies all other applicable requirements of Chapter 4; (3) when a good is produced entirely in the territory of one or both Parties and the good otherwise satisfies any applicable regional value content, and the good satisfies all other applicable requirements of Chapter 4; or (4) when the good is produced entirely in the territory of one or both Parties exclusively from originating materials. Product-specific rules of origin are set forth in an Annex. This section also covers certain rules of origin topics such as: the treatment of accessories; spare parts and tools shipped with a good; fungible goods; accumulation; a de minimis rule; indirect materials; and packaging. The Agreement provides for the use of certificates of origin and establishes verification and documentation obligations on importers and exporters.

Customs Administration.—The Agreement commits the Parties to transparency in regard to their customs laws, regulations, and administrative procedures. Each Party is obligated to establish customs procedures for the prompt release of goods, to promote the use of automation, to protect confidential information, to promulgate procedures for express shipments, to issue advanced rulings, to endeavor to adopt or maintain risk management systems with a concentration on high-risk goods, and to ensure that importers have access to administrative and judicial review of customs determinations.

Sanitary and Phytosanitary Measures.—Under the Agreement, the Parties affirm their existing rights and obligations with respect to one another under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The Parties agree that they may not have recourse to dispute settlement under the Agreement for disputes involving sanitary and phytosanitary (SPS) measures.

The Parties commit to establish a Committee on Sanitary and Phytosanitary Matters. The objectives of this Committee will include enhancing the implementation by each Party of the SPS Agreement, enhancing cooperation on SPS matters, and facilitating trade between the Parties. The Committee will provide a forum in which to consult on the development and application of SPS measures that affect, or may affect, trade between the Parties.

Technical Barriers to Trade.—This chapter refers to standards, technical regulations, and conformity assessment procedures that may affect trade in goods between the Parties. The Parties affirm their existing commitments under the WTO Agreement on Technical Barriers to Trade and endeavor to promote bilateral cooperation in the field of standards, regulations, and procedures. The Agreement provides for transparency and for the participation of the other Party in the development of such standards, regulations, and procedures. The Agreement encourages acceptance of the equivalence of foreign technical regulations by requiring that a Party not recognizing the technical standards of the other Party explain the reasons for non-acceptance of such regulations. The Agreement provides a range of mechanisms to facilitate the acceptance of conformity assessment results. A Committee on Technical Barriers to Trade is established to monitor the implementation of the Agreement, facilitate bilateral cooperation, exchange information, and to provide a venue for consultation.

Trade Remedies.—The Agreement establishes a bilateral safeguard mechanism that allows a Party to impose a temporary safeguard on a good of the other Party if, as a result of the reduction or elimination of a duty pursuant to the Agreement, that good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry.

If serious injury to a domestic industry, or threat thereof, is found under procedural and investigative requirements pursuant to domestic law and in accordance with the WTO Agreement on Safeguards, the importing Party may suspend any further staged reductions in duty on the good, or may increase the duty rate to a level not greater than a specified normal trade relations/most-favored nation (NTR/MFN) rate. A bilateral safeguard measure can be imposed for no longer than 3 years; for safeguards applied for more than 1 year, the Party must progressively liberalize the safeguard measure at regular intervals. In general, upon termination of the safeguard measure, the rate of duty on the good must return to the applicable level of duty as if the safeguard measure had never been applied, or, alternatively, the tariff must be eliminated in equal annual stages ending on the date the tariff is scheduled to be eliminated in the Agreement.

The Party imposing a safeguard measure must provide mutually agreed-upon trade liberalizing compensation in the form of concessions having substantially equivalent trade effects, or equivalent value, compared to the additional duties resulting from the safeguard measure. If the Parties are unable to reach an agreement on compensation, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the other Party. Under Chapter 8 of the Agreement, a bilateral safeguard measure cannot be applied more than once to a good, nor may a bilateral safeguard be applied or maintained to a good that is subject to a global safeguard measure imposed pursuant to domestic law and in accordance with the WTO Agreement on Safeguards. Chapter 8 of the Agreement permits the imposition of a bilateral safeguard measure only during the 10–12 year transition period identified in the Agreement.

Each Party retains its rights and obligations under the WTO Agreement on Safeguards, and the Agreement does not confer any additional rights or obligations on the Parties with respect to actions taken in accordance with the WTO Agreement on Safeguards.

The Agreement reaffirms the rights of each Party under the WTO regarding the application of antidumping (AD) or countervailing duty (CVD) measures, and provides that the application of AD or CVD measures by each Party is not subject to dispute settlement procedures under Chapter 22 of the Agreement.

Government Procurement.—The Agreement obligates each Party to accord national treatment to the procurement of goods, services, and suppliers of the other Party. The section provides transparency in the procurement process by requiring publication of advanced notice of intended procurement; provision of time frames in which to tender a procurement bid; publication of procurement specifications; limitations on restrictions on tender participation; and provision of open tendering procedures. It provides for domestic review of supplier challenges, including the establishment of an impartial review authority. Each Party is also required to establish or maintain bribery as a criminal offense.

Above certain monetary thresholds, the Agreement applies to procurement by 20 Chilean central government and 13 Chilean regional government entities, and by 79 entities of the United States Government-including the General Services Administration, departments of the Federal Government, and independent agencies, boards, and commissions. The applicability of the Agreement to certain goods procured for national security purposes is restricted. The Agreement also covers procurement by 341 Chilean municipalities and 37 U.S. States, above certain monetary thresholds and subject to specified conditions. In addition, the Agreement applies to certain port authorities in each country and to U.S. power authorities such as the Tennessee Valley Authority.

Investment.—The investment chapter has three sections. Section A lays out general rules on the treatment of investment. Each Party agrees to accord national treatment and normal trade relation/most-favored-nation (NTR/MFN) treatment to investors of the other Party and to their investments. Each Party commits to minimum standards of treatment for the other Party's investors and investments according to customary international law, including: (1) the obligation to not deny justice under the legal system; (2) police protection; (3) nondiscriminatory treatment for losses from armed conflict or civil strife; and (4) compensation for loss in the other Party's territory from requisition or destruction of the investment by the other Party's forces. The Parties agree not to impose mandatory performance requirements on an investment, whether the investor is from the other Party or from a non-Agreement party. Parties may not make an advantage conditional on meeting certain performance requirements. Performance requirements would be allowed, however, in some situations, such as to protect human, animal, or plant life or health. Neither Party may impose a nationality requirement on a senior manager of a company that is owned by an investor in the other Party; however, a Party may require that a majority of the company's board of directors be of a particular nationality, as long as the requirement does not impair the investor's control over the investment. The preceding rules in this paragraph do not apply to existing non-conforming measures at the central or regional level, as identified by the Parties, or to measures at the local level. Some of the rules do not apply to government procurement or government subsidies or grants.

Parties agree to permit transfers such as profits or proceeds from a sale to be made freely and without delay except in certain cases such as bankruptcy. Neither Party may require its investors to transfer, or penalize its investors that fail to transfer, amounts from investments in the other Party. Neither Party may expropriate a covered investment unless prompt and adequate compensation is paid or other conditions are met. The Agreement allows a Party to require information concerning an investment solely for informational or statistical purposes. It recognizes situations where a Party may deny benefits under the investment Chapter to an investor in one of the Parties that is owned or controlled by an investor in a non-Agreement party. It does not prevent a Party from taking measures to ensure that investments are sensitive to environmental concerns.

Section B sets out rules for investor-State disputes. Parties to an investor-State dispute should try to resolve the dispute through consultation and negotiation. If a dispute cannot be settled in that manner, the claimant may submit a claim to arbitration, but must notify the respondent at least 90 days before submitting a claim. Some 6 months must pass since events giving rise to the claim before a claimant may submit a claim to an arbitration tribunal. The Agreement has provisions on the consent of each Party, including a rule that no claim may be submitted to arbitration if more than 3 years have elapsed from when the claimant first acquired knowledge of the breach and damage. The Agreement describes the number of arbitrators and how they are appointed. It has rules for the conduct of the arbitration, including the place of arbitration, submissions by non-disputing Parties, objections by the respondent, interim measures of protection, and awards. Several provisions pertain to transparency of arbitral proceedings; for example, the tribunal must conduct hearings open to the public. Some provisions pertain to protection of confidential business information. The Agreement has provisions on governing law when a claim is submitted and the appointment of experts to report to the tribunal on scientific matters. It covers consolidation of two or more claims that arise from the same events. Rules on awards: state that a tribunal may award only monetary damages and restitution of property and may not award punitive damages; require each Party to provide for the enforcement of an award in its territory; and, present guidelines when a respondent fails to abide by or comply with a final award. Section C contains applicable definitions.

Cross-Border Trade in Services.—Chapter 11 of the Agreement applies to measures of central, regional, or local governments, and to certain measures by non-governmental bodies. It does not apply to financial services, most air services, government procurement, or public subsidies or grants. It requires that each Party provide national treatment and normal trade relation/most-favored-nation treatment (NTR/MFN) to service suppliers of the other Party and prohibits limitations on the number of service providers, the value of service transactions, the number of operations or output, or the number of persons employed in a sector. The Agreement would not apply these obligations to non-conforming measures identified by the Parties, such as cultural industries in Chile and social services and maritime transportation in both countries. It commits the Parties to respond to inquiries regarding regulations and to address in writing comments received from interested persons regarding proposed regulations. It calls for national authorities to respond promptly to service providers applying for authorization to supply a service, and emphasizes that measures on qualification requirements should not constitute unnecessary barriers to trade in services. The Agreement allows mutual recognition of qualifications met in another country as long as such recognition is in a non-discriminatory manner.

The Chapter on trade in services has two Annexes. One Annex states that express delivery services are subject to the Agreement. The other Annex covers professional services. It states that Parties shall encourage relevant national bodies to develop mutually acceptable standards for licensing and certification and to provide recommendations to the Free Trade Commission established under the Agreement. The Free Trade Commission shall review the recommendations, and based on this review, the Parties shall encourage their respective authorities to implement the recommendation. The Annex includes provisions on licensing standards specific to foreign legal consultants and engineers.

Financial Services.—This section accords to each Party national treatment and normal trade relation/most-favored-nation (NTR/MFN) treatment to the other Party's financial institutions, investments in financial institutions, and cross-border financial service suppliers. It grants market access to each Party's financial institutions by barring restrictions on the number of financial institutions, or restrictions based on the value of financial transactions, the number of service operations, or the number of persons employed. The Agreement commits each Party to permit a financial institution of the other Party to introduce new financial services that are permissible under the laws and regulations of the Party. The Agreement contains confidentiality provisions which place no obligation on either Party to disclose account information on individual customers or information that would impede law enforcement, the public interest, or legitimate commercial interests. The imposition of nationality or residency requirements on senior management or essential personnel is prohibited, and a Party may not require that more than a minority of the board of directors in a financial institution in the other Party be composed of nationals or residents of the Party.

A Committee on Financial Services is established to implement the Agreement, and to provide a venue for consultations. If a measure is deemed inconsistent with the Agreement, certain suspension of benefits is authorized. Each Party commits to the transparency of regulations and policies, including the advance publication of regulations, reasonable opportunities for comment on proposed regulations, and procedural openness in the application process. The Agreement allows for provisions excepting certain measures necessary to the safety, soundness, integrity, or financial responsibility of financial institutions and cross-border service providers. The Agreement contains an Annex listing existing non-conforming measures to remain in effect after the Agreement enters into force. It also contains an Annex comprised of specific commitments in the areas of right of establishment for banking and other financial services, portfolio management, and insurance.

Telecommunications.—The Agreement ensures access on reasonable and non-discriminatory terms to each Party's public telecommunications network service by enterprises of the other Party. Each Party is obligated to allow such enterprises to attach interface equipment to the public communications network, to offer services to individual or multiple users, to connect owned or leased circuits to the network, to perform signaling, switching, processing and conversion functions, and to use the operating protocols of their choice. The Parties also agree to obligations on maintaining competitive safeguards, unbundling of network elements consistent with national laws and regulations, physical co-location of telecommunications equipment, resale of telecommunications services, provision of dialing parity and number portability, and interconnection. The Agreement obligates each Party to ensure the independence of its telecommunications regulatory body and to provide transparency in licensing procedures and licensing criteria. The Parties agree to provide procedures to resolve domestic telecommunications disputes including recourse to telecommunications regulatory bodies, reconsideration of an adverse decision by a regulatory body, and judicial review of that decision.

Temporary Entry for Business Persons.—Chapter 14 of the Agreement sets forth general principles and obligations with respect to providing for the temporary entry of business persons. These provisions are more fully addressed in Part II, Report of the Committee on the Judiciary.

Electronic Commerce.—The Agreement commits the Parties to accord non-discriminatory treatment to a digital product from the other Party, and to accord a digital product from the other Party no less favorable treatment than from third countries. Under the Agreement, neither Party may apply customs duties on digital products of the other Party. In addition, the Agreement stipulates that the supply of a service using electronic means must be provided in accordance with the Chapters on Cross-Border Trade in Services and Financial Services.

Competition.—The Parties agree to adopt or maintain competition laws to proscribe anticompetitive business behavior, and each Party shall maintain an authority to enforce national competition laws. This authority shall establish certain procedural safeguards for firms alleged to be in violation, and decisions of this body are subject to review by an independent tribunal. The Parties also agree to cooperate on competition law enforcement. While specifically permitting the designation of privately-owned monopolies or state enterprises, the Agreement obligates each Party to ensure that such a monopoly or state enterprise acts in a manner not inconsistent with the Agreement in terms of the exercise of administrative, regulatory, or governmental authority, and the non-discriminatory provision of goods and services to covered investments. The Agreement also provides for transparency measures concerning each Party's enforcement activities and each Party's designated monopolies and state enterprises.

Intellectual Property Rights.—The intellectual property rights (IPR) provisions of the Agreement base IPR protection on principles of national treatment and transparency. Each Party agrees to ratify or accede to several IPR related treaties.

The Agreement specifies particular obligations of the Parties regarding protections of trademarks, geographical indications, copyrights, and patents. Each Party is to provide the means for persons of the other Party to apply for protection or petition for recognition of geographical indications. Each Party agrees to provide criminal penalties for certain copyright violations.

The Agreement provides that each country shall make patents available for any invention whether a product or a process. Each Party is to develop a patent protection for plants. It provides that a patent may only be revoked if grounds exist that would have justified an initial refusal to grant the patent. It also provides for adjustment of a patent term if a patent application is subject to unreasonable administrative delays. The Agreement also protects the confidentiality of information submitted for marketing approval or sanitary permits for pharmaceuticals and agricultural chemicals. The Agreement contains provisions to prevent the marketing approval of a pharmaceutical product subject to a patent prior to expiration of the patent term.

The Agreement provides transparency obligations for the Parties with regard to the enforcement of intellectual property rights. The Agreement provides for damages payable to rights-holders in civil cases. It provides authority to initiate actions to destroy infringing goods and the material and implements used to manufacture them, and it mandates that each Party provide criminal penalties for willful counterfeiting or piracy on a commercial scale. Certain provisions of the Chapter will take effect over periods of up to 2 to 5 years.

Labor.—In Chapter 18 of the Agreement, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (ILO Declaration). Each Party must strive to ensure that its domestic labor laws recognize and protect the fundamental labor principles spelled out in the ILO declaration and listed in Chapter 18. The Agreement defines labor laws to mean those statutes or regulations directly related to: the right of association; the right to organize and bargain collectively; a prohibition of forced or compulsory labor; a minimum age for the employment of children and elimination of the worst forms of child labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. Under the Agreement, each Party recognizes that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or derogate from such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 18.1 of the Agreement.

The Agreement recognizes the right of each Party to establish its own domestic labor standards, and to adopt or modify its labor laws. The Agreement provides that each Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties. The Agreement recognizes that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Each Party is obliged to provide fair, equitable, and transparent proceedings for the enforcement of labor laws to persons with a legally recognized interest in a particular matter, and each Party guarantees that parties to such proceedings may seek remedies to ensure the enforcement of their rights under domestic labor laws. Decisions by each Party's judicial tribunals are not subject to revision under the provisions of Chapter 18 of the Agreement.

The Agreement creates a United States-Chile Labor Affairs Council (LAC) to provide a forum for consultation on the Agreement and its implementation. A separate Labor Cooperation Mechanism is also established to: promote respect for ILO labor principles and other common commitments; establish priorities for cooperative activities on labor matters; develop specific cooperative activities; exchange information; promote the collection and publication of comparable labor data and enforcement activity; arrange periodic labor cooperation review sessions at the request of either Party; and develop recommendations for the respective Parties for their consideration.

A Party can request consultations with the other Party regarding any matter arising under Chapter 18 of the Agreement. If the Parties fail to resolve the matter through consultations, either Party may then request that the LAC be convened to address the matter. Dispute settlement procedures are available only when a Party asserts under Article 18.2(1)(a) that the other Party has failed to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties. In that instance, the complaining Party may request dispute settlement proceedings under Chapter 22 of the Agreement, after an initial 60-day consultation period, by requesting a meeting of the Agreement's Free Trade Commission (FTC). The Parties commit to establishing a roster of up to 12 individuals having expertise in labor law who may serve as panelists in any dispute settlement proceedings arising under Chapter 18 of the Agreement.

If a panel determines that a Party has not conformed with its obligations under Article 18.2(1)(a) and the Parties are unable to reach agreement on a resolution, the complaining Party may request that the panel reconvene to impose an annual monetary assessment on the other Party not to exceed $15 million, adjusted for inflation pursuant to Annex 22.16 of the Agreement. Any assessments will be paid into a fund established by the FTC and utilized for labor initiatives. Suspension of tariff benefits of an equivalent dollar value may result from a Party's failure to pay the monetary assessment.

Environment.—Chapter 19 of the Agreement recognizes the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify its environmental laws. Each Party is obliged to provide fair, equitable, and open proceedings for the enforcement of its environmental laws, as well as appropriate and effective remedies for violation of its environmental laws.

Under the Agreement, a Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties. The Agreement recognizes that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environment matters determined to have higher priorities.

The Parties commit to ensure that domestic laws provide for high levels of environmental protection, and to strive to continue to improve those laws. Each Party also recognizes that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Thus, each Party under the Agreement shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or derogate from, such laws in a manner that weakens or reduces protections afforded in those laws as an encouragement for trade with the other Party.

Chapter 19 of the Agreement defines an environmental law as any statute or regulation of a Party, or provision thereof, the primary purpose of which is to protect the environment or prevent a danger to human life or health, through: the prevention, abatement, or control of the release or emission of pollutants or environmental contaminants; the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes; or, the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas. The Agreement excludes from the definition of environmental law any statute or regulation, or provision thereof, directly related to worker safety or health. The Agreement also excludes from the definition of environmental law any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources. The Agreement states that for purposes of the definition of environmental law, the primary purpose of a particular statutory or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is a part.

The Agreement creates an Environment Affairs Council (EAC) to provide a forum for consultation on the Agreement and its implementation. The EAC is obliged to ensure a process for promoting public participation in its work, including by seeking advice from the public in developing agendas for council meetings and by engaging in a dialogue with the public on those issues. Separately, each Party commits to provide for the receipt and consideration of public communications on matters related to Chapter 19 of the Agreement. The Parties also commit to pursue a number of cooperative projects specified in Annex 19.3 of the Agreement, and to promptly negotiate a United States-Chile Environmental Cooperation Agreement that will establish priorities for further cooperative environmental activities, as elaborated in Annex 19.3.

A Party can request consultations with the other Party regarding any matter arising under Chapter 19 of the Agreement. If the Parties fail to resolve the matter through consultations, either Party may then request that the EAC be convened to address the matter.

Dispute settlement procedures are available only when a Party asserts under Article 19.2(1)(a) that the other Party has failed to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties. In that instance, the complaining Party may request dispute settlement proceedings under Chapter 22 of the Agreement, after an initial 60-day consultation period, by requesting a meeting of the Agreement's Free Trade Commission (FTC). The Parties commit to establishing a roster consisting of at least 12 individuals having expertise in environmental law who may serve as panelists in any dispute settlement proceedings arising under Chapter 19 of the Agreement.

If a panel determines that a Party has not conformed with its obligations under Article 19.2(1)(a) and the Parties are unable to reach agreement on a resolution, the complaining Party may request that the panel reconvene to impose an annual monetary assessment on the other Party not to exceed $15 million, adjusted for inflation pursuant to Annex 22.16 of the Agreement. Any assessments will be paid into a fund established by the FTC and utilized for environmental initiatives. Suspension of tariff benefits of an equivalent dollar value may result from a Party's failure to pay the monetary assessment.

The Parties recognize the importance of multilateral environmental agreements (MEAs) and agree to consult on the extent to which the outcome of ongoing WTO negotiations, regarding the relationship between WTO rules and trade obligations specified in MEAs, applies to the Agreement. The Parties also agree to encourage businesses to voluntarily incorporate sound principles of corporate stewardship into their internal policies.

Transparency.—In this Chapter, the Parties commit to several requirements to foster openness, transparency, and fairness in administrative procedures covered by the Agreement. Each Party is required to designate a point of contact for Agreement-related communication between the Parties. In addition, the Parties commit to publish legal material relating to the Agreement, to notify of proposed or actual measures that potentially affect the operation of the Agreement, to accord persons reasonable notice of administrative proceedings and an opportunity to provide evidence, and to provide the opportunity of judicial review and appeal of final administrative actions.

Administration.—The Agreement establishes a joint Free Trade Commission (FTC) which is composed of cabinet-level representatives or their designees from each Party. The FTC is to supervise the implementation of the Agreement, to oversee the work of committees established under the Agreement, and to assist in the resolution of disputes. The FTC may also establish and delegate authority to committees and working groups and may approve certain modifications to the Agreement, such as the acceleration of tariff elimination and the modification of the rules of origin.

Dispute Settlement.—Chapter 22 of the Agreement establishes a dispute settlement mechanism applicable to the avoidance or settlement of all disputes between the Parties regarding: the interpretation or application of the Agreement; claims that a measure of a Party is inconsistent with the Agreement or that a Party has otherwise failed to carry out its obligations under the Agreement; or, claims that a measure of one Party causes nullification or impairment of benefits to the other Party. The Agreement specifies the chapters under which a claim of nullification or impairment may be made as being: Chapter 3 (National Treatment and Market Access for Goods; Chapter 4 (Rules of Origin and Origin Procedures); Chapter 5 (Customs Administration); Chapter 7 (Technical Barriers to Trade); Chapter 9 (Government Procurement); Chapter 11 (Cross Border Trade in Services), subject to minor exceptions contained in Article 23.1 pursuant to Annex 22.2(2) of the Agreement; and Chapter 17 (Intellectual Property Rights), subject to minor exceptions contained in Article 23.1 pursuant to Annex 22.2(2) of the Agreement. For disputes arising under Chapter 18 (Labor) or Chapter 19 (Environment), dispute settlement procedures under Chapter 22 of the Agreement may be invoked only with respect to a Party's obligation to not fail to effectively enforce its labor or environmental laws, as the case may be, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties.

A Party must first make a written request for consultations and deliver the request to the other Party. If the Parties fail to resolve the matter within 60 days of delivery of the request (15 days for disputes involving perishable goods), or within a period agreed upon by the Parties, a Party may request a meeting of the Free Trade Commission (FTC). The FTC should ordinarily convene within 10 days. If the Parties fail to resolve a matter within: 30 days after the FTC convenes; 75 days after a request for consultations, if the FTC has not convened; 30 days after a request involving perishable goods, if the FTC has not convened; or within another period agreed upon by the Parties, either Party may request that a 3-member panel be established. The Parties are obliged to establish a roster of at least 20 individuals who can serve as panelists, 6 of whom are to be non-Agreement party nationals unless the Parties agree otherwise. Procedures for panel selection are set forth in the Agreement. The Agreement commits the FTC to establish rules of procedure for panels; these rules shall include the right to at least one public hearing before the panel, subject to the protection of confidential information.

A panel is to present its initial report within 120 days after the last panelist is selected. The initial report shall contain: findings of fact; a determination as to whether a Party has not conformed with its obligations under the Agreement or that a measure is causing nullification or impairment of benefits to the other Party; any other determination requested in the terms of reference; and, the panel's recommendations, if the Parties have requested them, for resolving the dispute. After Party comment, the panel is to issue a final report to the Parties within 30 days of the initial report, unless the Parties agree otherwise. Public release of the final report is to occur within 15 days thereafter, subject to the protection of confidential information. Upon receiving the final report, the Parties are to agree on a resolution of the dispute and, in instances of nonconformance with obligations under the Agreement or nullification or impairment of benefits as defined under the Agreement, such resolution, wherever possible, should be the elimination of the nonconformity or the nullification or impairment. Where appropriate, the Parties may agree on an action plan to resolve the dispute; if the Parties agree on such an action plan, additional measures under Chapter 22 of the Agreement may be pursued only for failure to carry out the action plan.

If the panel has found nonconformance with obligations under the Agreement or nullification or impairment of benefits as defined under the Agreement, and the Parties cannot resolve their dispute generally within 45 days of receiving the panel's final report, the Parties must enter into compensation negotiations. If the Parties cannot agree on compensation within 30 days, or the Parties agree on compensation or some other resolution of the dispute and the complaining Party believes that the other Party has failed to observe the terms of such resolution, the complaining Party may propose a suspension of trade benefits of equivalent effect. In general, the complaining Party may begin suspending trade benefits 30 days after providing notice of its intent to do so. If the other Party believes that either the proposed suspension of benefits is manifestly excessive, or that it has eliminated the nonconformity or nullification or impairment identified by the panel and therefore suspension of benefits is not warranted, the Party may request that the panel be reconvened in order to consider the matter. In that instance, the complaining Party may not begin suspending benefits until 30 days after receiving the determination of the reconvened panel; if the panel determines that the proposed level of benefits to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

The complaining Party may not suspend benefits if the reconvened panel determines that the other Party has eliminated the nonconformity or nullification or impairment. Similarly, the complaining Party may not suspend benefits if the other Party chooses to pay an annual monetary assessment; if the Parties cannot agree on an amount of monetary assessment, the amount will be set at a level equal to 50 percent of the level determined by the reconvened panel or, if the panel has not reconvened, 50 percent of the amount proposed by the complaining Party. The monetary assessment is to be paid to the complaining Party, or, if the FTC so decides, into a fund established by the FTC. Monies paid into such a fund shall be expended at the direction of the FTC for appropriate initiatives to facilitate trade between the Parties. Suspension of the full amount of benefits previously identified pursuant to the Agreement may result from a Party's failure to pay a monetary assessment.

Where a dispute involves Article 18.2(1)(a) (Enforcement of Labor Laws) or Article 19.2(1)(a) (Enforcement of Environmental Laws), however, and the Parties either: are unable to reach agreement on a resolution within 45 days of receiving the panel's final report; or the Parties agree on a resolution of the dispute and the complaining Party considers that the other Party has failed to observe the terms of such resolution, the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party. The panel is to take certain enumerated factors into account in setting the level of monetary assessment; the amount of the assessment shall not exceed $15 million annually, adjusted for inflation pursuant to Annex 22.16 of the Agreement. The amount is to be paid into a fund established by the FTC and is to be expended at the direction of FTC for appropriate labor or environmental initiatives, as the case may be, in the territory of the Party complained against. If the assessment is not paid, the complaining Party may take other appropriate steps to collect the assessment, including suspending tariff benefits under the Agreement.

The Agreement also establishes a compliance review procedure available in all disputes, under which the Party complained against may request that the panel determine whether a previously identified nonconformity or nullification or impairment has been eliminated. The panel must report within 90 days, and if it decides that the Party is in compliance, the complaining Party must promptly reinstate any benefits that it has suspended and the other Party will no longer be required to pay any monetary assessment.

Not later than 5 years after the Agreement enters into force, the FTC is required to review the operation and effectiveness of the provisions in Chapter 22 of the Agreement that address non-implementation of the final report (i.e. the provisions allowing for suspension of benefits or imposition of monetary assessments). In the event five proceedings initiated under Chapter 22 of the Agreement result in either the suspension of benefits or the imposition of monetary assessments, the FTC shall complete its review within 6 months of the fifth such occurrence, if sooner than 5 years after the Agreement enters into force.

General Exceptions.—This Chapter identifies general exceptions applicable to the Agreement. This Chapter also addresses essential security interests, taxation, balance of payment measures, and the disclosure of information.

Final Provisions.—The Agreement is subject to amendment by mutual consent of the Parties. The Agreement enters into force 60 days after the Parties exchange written notification that necessary domestic legal procedures by each Party have been completed. Either Party may withdraw from the Agreement, effective 180 days after notification to the other Party.

D. GENERAL DESCRIPTION OF THE BILL

TITLE I. APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

Sec. 101. Approval and Entry Into Force of the Agreement

This section provides Congressional approval for the Agreement and its accompanying Statement of Administrative Action. Section 101 also authorizes the President to exchange notes with Chile to provide for entry into force of the Agreement on or after January 1, 2004. The exchange of notes is conditioned on a determination by the President that Chile has taken measures necessary to comply with those of its obligations that take effect at the time the Agreement enters into force.

Sec. 102. Relationship of the Agreement to United States and State Law

This section establishes the relationship between the Agreement and U.S. law. It clarifies that no provision of the Agreement will be given effect under domestic law if inconsistent with Federal law; this would include provisions of Federal law enacted or amended by the Act.

Section 102 also provides that no State law may be declared invalid on the ground that the law is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law invalid.

This section precludes any private right of action or remedy against the Federal Government, or a State, based on the provisions of the Agreement.

Sec. 103. Consultation and Layover Provisions for, and Effective Date of, Proclaimed Actions

This section sets forth consultation and layover steps that must precede the President's implementation of any tariff modification by proclamation. Under the consultation and layover provisions, the President must obtain the advice of the relevant private sector advisory committees and the U.S. International Trade Commission (ITC) on a proposed action. The President must submit a report to the Senate Committee on Finance and the House Committee on Ways and Means setting forth the action proposed, the reasons therefor, and the advice of the private sector advisors and the ITC. The Act sets aside a 60 day period following the date of transmittal of the report for the Committees to consult with the President on the action.

Sec. 104. Implementing Actions in Anticipation of Entry Into Force and Initial Regulations

This section provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, on the date the Agreement enters into force. This section also requires that, whenever possible, all Federal regulations required or authorized under the Implementation Act are to be developed and promulgated within 1 year of the Agreement's entry into force.

Sec. 105. Administration of Dispute Settlement Proceedings

This section authorizes the President to establish or designate within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 22 of the Agreement. This section also authorizes the appropriation of funds to support this office.

Sec. 106. Arbitration of Certain Claims

This section authorizes the United States to use binding arbitration to resolve claims covered by two provisions of the Agreement that concern government contracts. This section also provides that contracts executed by an agency of the United States on or after the entry into force of the Agreement shall contain a clause specifying the law that will apply to resolve any breach of contract claim.

Sec. 107. Effective Dates; Effect of Termination

This section provides the dates that certain provisions of the Act will go into effect. Section 107 also provides that the provisions of the Implementation Act will no longer be in effect on the date on which the Agreement ceases to be in force.

TITLE II. CUSTOMS PROVISIONS

Sec. 201. Tariff Modifications

Section 201(a) of the bill grants the President the authority to implement by proclamation the continuation, modification or elimination of tariffs as the President determines to be necessary or appropriate to carry out the terms of the Agreement.

Section 201(a)(2) requires the President to withdraw Chile's beneficiary status under the Generalized System of Preferences program once the Agreement takes effect. Section 201(b) authorizes the President, subject to the consultation and layover provisions of section 103(a) of the bill, to: modify or continue any duty; modify the staging of duty elimination pursuant to an agreement with Chile under Article 3.3(4) of the Agreement; keep in place duty-free or excise treatment; or impose any duty by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Chile provided by the Agreement.

Section 201(c) authorizes the Secretary of the Treasury to implement the agricultural safeguard provisions of Article 3.18 of the Agreement. Article 3.18 permits the United States to impose an agricultural safeguard measure—in the form of additional duties—on imports from Chile of an agricultural good listed in Annex 3.18 of the Agreement. The United States may apply the additional duties to shipments of any such good whose price is below the threshold ("trigger price") for the good set out in Annex 3.18.

The agricultural safeguard may not be imposed on a product already subject to a measure under the bilateral safeguard provisions of Chapter 8 of the Agreement or under a global safeguard imposed pursuant to domestic law and in accordance with the WTO Agreement on Safeguards. Once a product has achieved duty-free status under the Agreement, the agricultural safeguard may not be imposed upon the product. The agricultural safeguard may not be applied to increase a zero in-quota duty on a good subject to a tariff-rate quota. Moreover, the sum of additional duties imposed under the agricultural safeguard cannot exceed the lesser of the prevailing normal trade relation/most-favored-nation (NTR/MFN) applied rate or the NTR/MFN applied rate in effect prior to the entry into force of the Agreement.

The agricultural safeguard is applicable only during the 12 year implementation period of the Agreement. Some of the products for which the United States may impose an agricultural safeguard are: apricots, artichokes, asparagus, avocados, broccoli, brussels sprouts, carrots, celery, cherries, garlic products, grapefruit, melons, mushrooms, onion products, oranges, orange juice, orange pulp, peaches, pears, spinach, sweet corn, tomato products, and water chestnuts. Chile may impose an agricultural safeguard to imports of various forms of the following products from the United States: bird eggs; meat and edible offals; rice; rice flour; wheat starch; wheat gluten; and groats and meals of wheat.

Sec. 202. Rules of Origin

This section implements the general rules of origin of the Agreement. Under the general rules, there are different ways for a good of Chile to qualify as an originating good, and therefore be eligible for preferential tariff treatment when the good is imported into the United States. For example, as provided in this section, a good is an originating good if it is "wholly obtained or produced entirely in the territory of Chile, the United States, or both." As another example, the general rules of origin provide that a good is an "originating good" if those materials used to produce the good, that are not themselves originating goods, are transformed in such a way that they meet or satisfy a required change in tariff classification. This section sets forth other specific rules related to determining whether a good meets the Agreement's requirements for qualifying as an originating good.

This section authorizes the President to modify certain of the Agreement's specific rules of origin by proclamation, subject to the consultation and layover provisions of section 103 of the Implementation Act. Various provisions of the Agreement expressly contemplate modifications to the rules of origin. For example, Article 3.20(5) contemplates that the United States and Chile may agree to revise the Agreement's rules of origin for particular textile and apparel goods in light of the availability of fibers, yarns, or fabrics in their respective territories. Section 202 expressly limits the President's authority to modify specific rules of origin pertaining to textile and apparel goods.

The remainder of section 202 sets forth specific rules related to determining whether a good meets the Agreement's other requirements for qualifying as an originating good. For example, section 202(b) provides that a good is not disqualified as an originating good if it contains de minimis quantities of non-originating materials that do not undergo a tariff transformation. Section 202(d) implements provisions of the Agreement that require certain goods to have at least a specified percentage of regional value content to qualify as originating goods. Section 202(d) prescribes alternative methods for calculating regional value content. Other provisions in section 202 address valuation of materials and the determination of originating or non-originating status for fungible goods and materials.

Sec. 203. Drawback

This section implements Article 3.8 of the Agreement, which phases out duty drawback and duty deferral programs between the United States and Chile over 3 years, beginning 8 years after the Agreement enters into force. The bill sets forth a formula which will be used to calculate the amount of the refund, waiver, or remission that will be allowed for duties owed or paid during the 3 year period that drawback is phased out. The formula, which is drawn from Article 3.8(5) of the Agreement, limits the amount of duty paid or owed that may be refunded, waived or reduced to no more than: 75 percent during 2012; 50 percent during 2013; and 25 percent during 2014.

The formula will be applied to drawback claims for duties paid on imported goods that are subsequently exported, as well as duties that are deferred because the imported goods fall under provisions for foreign trade zones or another duty deferral program. Beginning January 1, 2015, with limited exceptions, no drawback will be available for imports from and exports to Chile.

Sec. 204. Customs User Fees

This section amends section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) to provide for the immediate elimination of the merchandise processing fee for goods qualifying for preferential treatment under the terms of the United States-Chile Free Trade Agreement. Processing of goods under the Agreement will be financed by money from the General Fund of the Treasury.

Sec. 205. Disclosure of Incorrect Information; Denial of Preferential Tariff Treatment; False Certificates of Origin

Under this section, the United States may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if, after discovering that the claim is invalid, the importer voluntarily corrects the claim and pays any duty owing. If it is determined that an importer has certified more than once, falsely or without substantiation, that a good qualifies as originating, the United States may suspend preferential tariff treatment under the Agreement for identical goods imported by that person. The suspension may continue until the importer proves that it has complied with the laws and regulations governing claims for preferential tariff treatment.

Sec. 206. Reliquidation of Entries

Article 4.12(3) of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within 1 year of importation, even if no such claim was made at the time of importation. In seeking a refund for excess duties paid, the importer must provide the customs authorities information substantiating that the good was in fact an originating good at the time of importation.

Section 206 of the bill implements U.S. obligations under Article 4.12(3) of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within 1 year of their importation.

Sec. 207. Recordkeeping Requirements

This section establishes recordkeeping requirements which are necessary or appropriate to carry out the terms of the Agreement, including the requirement that any person who completes and issues a Chile FTA Certificate of Origin keep a copy of the Certificate for a period of at least 5 years from the date of issuance of the Certificate.

Sec. 208. Enforcement of Textile and Apparel Rules of Origin

Under section 208, U.S. customs officials may request that Chile initiate verifications and work with Chilean officials in conducting them. Following a U.S. request for a verification, the Committee for the Implementation of Textile Agreements (CITA), by delegation of authority from the President, may direct the Secretary of the Treasury to take appropriate action described in section 208(b) while the verification is being conducted. U.S. customs officials will determine whether the exporter or producer that is subject to the verification is complying with applicable customs rules, and whether statements regarding the origin of textile or apparel goods exported or produced by that firm are accurate. If U.S. customs officials determine that an exporter or producer is not complying with applicable customs rules or that it is making false statements regarding the origin of textile or apparel goods, they will report their findings to CITA. Similarly, if U.S. customs officials are unable to make the necessary determination (e.g., due to lack of cooperation by the exporter or producer), they will report that fact to CITA. For its part, CITA may direct the Secretary to take appropriate action described in section 208(d) in the case of an adverse determination or a report that customs officials are unable to make the necessary determination. Such appropriate action includes suspending the liquidation of entries of textile and apparel goods, publishing the identity of the person subject to the verification, and, in certain circumstances, denying the entry of goods into the United States.

Sec. 209. Conforming Amendments

This section makes conforming amendments to the Tariff Act of 1930 to reflect changes in paragraph numbering as a result of amendments resulting from the Agreement.

Sec. 210. Regulations

This section requires the Secretary of the Treasury to prescribe such regulations as may be necessary to carry out provisions of the Agreement concerning rules of origin, drawback, and customs user fees.

TITLE III. RELIEF FROM IMPORTS

Sec. 301. Definitions

This section defines the terms "Commission" and "Chilean Article" for purposes of the bilateral safeguard provision contained in Chapter 8 of the United States-Chile Free Trade Agreement. The term "Commission" is defined as the United States International Trade Commission, and the term "Chilean Article" is defined as an article that qualifies as an originating good under section 202(a) of the United States-Chile Free Trade Agreement Implementation Act. This section also defines the term "Chilean Textile or Apparel Article" for purposes of the textile and apparel safeguard provision contained in Chapter 3 of the United States-Chile Free Trade Agreement. The term "Chilean Textile or Apparel Article" is defined as an article that is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(4)), and that satisfies the definition of a Chilean article as provided for in this section.

Subtitle A. Relief From Imports Benefiting From the Agreement

Sec. 311. Commencing of Action for Relief

This section requires the filing of a petition with the Commission by an entity that is representative of an industry in order to commence a bilateral safeguard investigation. Section 311(b) provides that, upon the filing of a petition, the Commission shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the United States-Chile Free Trade Agreement, a Chilean article is being imported into the United States in such increased quantities, and under such conditions, that imports of the Chilean article constitute a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 311(c) applies to any bilateral safeguard initiated under the Agreement pursuant to certain provisions, both substantive and procedural, contained in section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) that apply to global safeguard investigations. These provisions include, inter alia, the requirement that the Commission publish notice of the commencement of an investigation; the requirement that the Commission hold a public hearing at which interested parties and consumers have the right to be present, to present evidence, and to respond to the presentations of other parties and consumers; the factors to be taken into account by the Commission in making its determinations; and authorization for the Commission to promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties in an investigation.

Section 311(d) precludes the initiation of an investigation with respect to any Chilean article to which import relief has already been provided under this section, or any Chilean article that is subject, at the time the petition is filed, to global safeguard relief pursuant to Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.).

Sec. 312. Commission Action on Petition

This section establishes deadlines for Commission determinations following the initiation of a bilateral safeguard investigation. Section 312(b) applies certain statutory provisions that address a divided vote by the Commission in a global safeguard investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) to Commission determinations under this section. If the Commission renders an affirmative injury determination, or a determination that the President may consider to be an affirmative determination in the event of a divided vote by the Commission, section 312(c) requires that the Commission also find and recommend to the President the amount of import relief that is necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 312(d) specifies the information to be included by the Commission in a report to the President regarding its determination. Upon submitting the requisite report to the President, section 312(e) requires the Commission to promptly make public such report, except for confidential information contained in the report.

Sec. 313. Provision of Relief

This section directs the President, not later than 30 days after receiving the report from the Commission, to provide relief from imports of the article subject to an affirmative determination by the Commission, or a determination that the President considers to be an affirmative determination in the event of a divided vote by the Commission, to the extent that the President determines necessary to remedy or prevent the injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

Section 313(c) specifies the nature of the import relief that the President may impose, to include: the suspension of any further reduction in duty provided under Annex 3.3. of the United States-Chile Free Trade Agreement; and an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the normal trade relation/most-favored-nation (NTR/MFN) duty rate imposed on like articles at the time the import relief is provided, or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the United States-Chile Free Trade Agreement enters into force. Section 313(c) also requires that if the period for which import relief is provided exceeds 1 year, the President shall provide for the progressive liberalization (described in article 8.2(2) of the United States-Chile Free Trade Agreement) of such relief at regular intervals during the period of its application.

Section 313(d) provides that the period for import relief in a bilateral safeguard action, including any extension of such import relief, shall not exceed 3 years. If the initial period for import relief is less than 3 years, the President may extend the effective period of such relief under section 313(d) if the President determines that import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition. Before the President can extend the period of import relief, the President must first receive a report from the Commission under section 313(d)(2)(B) containing an affirmative determination, or a determination that the President may consider to be an affirmative determination in the event of a divided vote by the Commission, that import relief continues to be necessary to remedy or prevent serious injury and that the domestic industry is making a positive adjustment to import competition.

Section 313(e) provides that upon termination of import relief under the bilateral safeguard provision, the rate of duty to be applied through December 31 of the year in which such termination occurred shall be the rate of duty that would have been in effect 1 year after the provision of import relief, as specified in the Schedule of the United States contained in Annex 3.3 of the United States-Chile Free Trade Agreement. Thereafter, the President is afforded the discretion to set the rate of duty applied to the article formerly subject to import relief as either: the applicable rate of duty for such article as specified in the Schedule of the United States contained in Annex 3.3 of the United States-Chile Free Trade Agreement, or the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in Annex 3.3 of the United States-Chile Free Trade Agreement for elimination of the tariff.

Section 313(f) provides that no import relief may be provided under the bilateral safeguard provision on any article that is subject to global safeguard relief pursuant to Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.). This section is necessary to implement article 8.2(4) of the United States-Chile Free Trade Agreement, in the event that an article subject to import relief under the bilateral safeguard subsequently becomes subject to global safeguard relief pursuant to Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.).

Sec. 314. Termination of Relief Authority

This section provides that the President's authority to impose import relief under the bilateral safeguard provision ends after the date that is 10 years after the date on which the United States-Chile Free Trade Agreement enters into force or, if an article is subject to a 12 year period for tariff elimination pursuant to the Schedule of the United States contained in Annex 3.3 of the United States-Chile Free Trade Agreement, the President's authority to impose import relief terminates after the date that is 12 years after the date on which the United States-Chile Free Trade Agreement enters into force.

Sec. 315. Compensation Authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant Chile new concessions as compensation for the imposition of import relief in a bilateral safeguard investigation, in order to maintain the general level of reciprocal concessions.

Sec. 316. Confidential Business Information

This section applies the same procedures for the treatment and release of confidential business information by the Commission in a global safeguard investigation under Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.) to bilateral safeguard investigations under this provision.

Subtitle B. Textile and Apparel Safeguard Measures

Sec. 321. Commencement of Action for Relief

This section requires the filing of a request with the President by an interested party in order to commence action for relief under the textile and apparel safeguard provision. Upon the filing of a request, the President shall review the request to determine, from the information presented in the request, whether to commence consideration of the request. Section 321(b) provides that, if the President determines that the request provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include the request and the dates by which comments and rebuttals must be received.

Sec. 322. Determination and Provision of Relief

This section provides that following the President's commencement of consideration of the request, the President shall determine whether, as a result of the elimination of a duty under the United States-Chile Free Trade Agreement, a Chilean textile or apparel article is being imported into the United States in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 322(a) identifies certain economic factors that the President shall examine in making a determination, including changes in the domestic industry's output, productivity, capacity utilization, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive. Section 322(a) also provides that the President shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

Section 322(b) authorizes the President, in the event of an affirmative determination of serious damage or actual threat thereof, to provide import relief to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition. Section 322(b) also specifies the nature of the import relief that the President may impose, to consist of an increase in the rate of duty imposed on the textile or apparel article to a level that does not exceed the lesser of: the normal trade relation/most-favored-nation (NTR/MFN) duty rate in place for like articles at the time the import relief is provided, or, the NTR/MFN duty rate for like articles on the day before the date on which the United States-Chile Free Trade Agreement enters into force.

Sec. 323. Period of Relief

This section provides that the period for import relief in a textile and apparel safeguard action, including any extension of such import relief, shall not exceed 3 years. If the initial period for import relief is less than 3 years, the President may extend the effective period of such relief if the President determines that the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition.

Sec. 324. Articles Exempt From Relief

This section precludes the President from providing import relief under the textile and apparel safeguard provision with respect to any article to which import relief has already been provided under the textile and apparel safeguard provision.

Sec. 325. Rate After Termination of Import Relief

This section provides that upon termination of import relief under the textile and apparel safeguard, the rate of duty on such article shall be duty-free.

Sec. 326. Termination of Relief Authority

This section provides that the President's authority to provide relief under the textile and apparel safeguard provision terminates after the date that is 8 years after the date on which duties on the article are eliminated pursuant to the United States-Chile Free Trade Agreement.

Sec. 327. Compensation Authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant Chile new concessions as compensation for the imposition of import relief in a textile and apparel safeguard proceeding, in order to maintain the general level of reciprocal concessions.

Sec. 328. Business Confidential Information

This section precludes the President from releasing information that the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. This section also provides that, to the extent business confidential information is provided, a nonconfidential version of the information shall also be provided in which the business confidential information is summarized or, if necessary, deleted.

TITLE IV. TEMPORARY ENTRY OF BUSINESS PERSONS

Sections 401 through 404 implement Chapter 14 of the Agreement with respect to providing for the temporary entry of business persons. These provisions are more fully addressed in Part II, Report of the Committee on the Judiciary.

E. CONGRESSIONAL ACTION

On November 29, 2000, President William J. Clinton announced that the United States and Chile had agreed to negotiate a bilateral free trade agreement. On December 6, 2000, the two countries commenced negotiations. On October 1, 2002, President George W. Bush notified the Congress of ongoing negotiations with Chile on a free trade agreement. On December 11, 2002, the United States Trade Representative (USTR) announced that the United States and Chile had successfully concluded negotiations for the United States-Chile Free Trade Agreement. On January 29, 2003, President Bush notified Congress of his intention to enter into the Agreement. The Agreement was signed on June 6, 2003, by USTR Robert B. Zoellick and Chilean Foreign Minister Soledad Alvear. The Administration informally submitted draft implementing legislation to the 108th Congress in June 2003.

On June 10, 2003, the House Ways and Means Committee, Subcommittee on Trade, held a hearing on the implementation of the bilateral Free Trade Agreements with Chile and Singapore. The Subcommittee received testimony from the Hon. Earl Blumenauer (Representative in Congress from the State of Oregon); the Hon. Pete Sessions (Representative in Congress from the State of Texas); the Hon. Judy Biggert (Representative in Congress from the State of Illinois); the Hon. Peter F. Allgeier (Deputy United States Trade Representative); E. Leon Trammell (founder and chief executive officer, Tramco, Incorporated, on behalf of the U.S. Chamber of Commerce); Jeff Jacobs (president, Global Business Development, QUALCOMM, Incorporated); Keith Gottfried (senior vice president and general counsel, Borland Software Corporation, on behalf of the Business Software Alliance); Bob Haines (manager, International Relations, Exxon Mobil Corporation, and co-chair, U.S.-Singapore Free Trade Agreement Business Coalition); Joseph Papovich (senior vice president, international, Recording Industry Association of America, on behalf of the Entertainment Industry Coalition for Free Trade); David Spence (managing director, regulatory and industry affairs, Legal Department, Federal Express, and chairman, Trade Committee, Air Courier Conference of America); Gawain Kripke (senior policy advisor, Oxfam America); Thea M. Lee (chief international economist, American Federation of Labor and Congress of Industrial Organizations); John Audley (senior associate and director, Project on Trade, Equity, and Development, Carnegie Endowment for International Peace).

On June 17, 2003, the Senate Committee on Finance held a public hearing on the implementation of the bilateral Free Trade Agreements with Chile and Singapore. The Committee received testimony from the Hon. Peter Allgeier (Deputy United States Trade Representative); Norman Sorensen (president, Principal International Incorporated, on behalf of the Coalition of Service Industries); James Jarrett (vice president for worldwide government affairs, Intel Corporation, on behalf of the Business Software Alliance and the High Tech Trade Coalition); Jeffrey Shafer (managing director, Citigroup, on behalf of the U.S.-Singapore Free Trade Agreement Business Coalition); Sandra Polaski (senior associate, Carnegie Endowment for International Peace); Larry Liebenow (president and chief executive officer, Quaker Fabric Corporation, and chairman of the executive committee of the U.S. Chamber of Commerce); Jon Caspers (Pleasant Valley Pork Corporation, and president of the National Pork Producers Council); Keith Schott (Bar Four F Ranch Incorporated, and treasurer, Montana Grain Growers Association); David Johnson (executive vice president and general counsel, Warner Music Group, on behalf of the Entertainment Industry Coalition for Free Trade); and Paul Joffe (senior director for international affairs, National Wildlife Federation).

On July 10, 2003, the Senate Committee on Finance conducted an informal consideration of the implementing language submitted by the Administration. During the informal consideration, Senators Thomas and Conrad sought clarification on the sugar provisions of the Agreement. In subsequent correspondence, Ambassador Zoellick clarified that each Party agreed that its access to the other's market under the Agreement will be limited to the amount of its net trade surplus in specified sugar products. The House Ways and Means Committee and the House Judiciary Committee conducted their informal considerations of the implementing language on July 10, 2003, respectively. On July 14, 2003, the Senate Judiciary Committee notified an informal consideration of the Administration's implementing language.

On July 15, 2003, the Administration formally transmitted to Congress the implementing legislation for the United States-Chile

Free Trade Agreement. On July 15, 2003, Senator Charles E. Grassley introduced legislation in the Senate (S. 1416), with Senators Max Baucus and William Frist as cosponsors, to implement the Agreement. Congressman Tom DeLay, with Congressman Charles Rangel as a cosponsor, both by request, introduced the identical legislation in the House (H.R. 2738), on July 15, 2003.

On July 14, 2003, the Senate Judiciary Committee held a public hearing on draft implementing legislation for the proposed United States-Chile Free Trade Agreement. The Committee received testimony from Regina Vargo (Assistant United States Trade Representative for the Americas), and Ralph Ives (Assistant United States Trade Representative for Southeast Asia, Pacific, and APEC Affairs).

On July 17, 2003, the Senate Committee on Finance unanimously reported out S. 1416, a bill to implement the United States-Chile FTA by a vote of 21–0. The House Ways and Means Committee also favorably reported out H.R. 2738 on July 17, 2003, by a vote of 33–5. On the same day, the Senate Judiciary Committee also favorably reported out the measure by a vote of 11–4. The House Judiciary Committee favorably voted out the measure on July 16, 2003, with a voice vote.

F. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that S. 1416 was ordered favorably reported, without amendment, by a unanimous recorded vote with a quorum present on July 17, 2003.

G. REGULATORY IMPACT AND OTHER MATTERS

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4). The committee has reviewed the provisions of S. 1416 as approved by the Committee on July 17, 2003. In accordance with the requirement of Pub. L. No. 104–4, the Committee has determined that the bill contains no intergovernmental mandates, as defined in the UMRA, and would not affect the budgets of State, local, or tribal governments.

PART II. REPORT OF THE COMMITTEE ON THE JUDICIARY

A. BACKGROUND

As provided in Article 14.1 et seq. and Annex 14.3, the United States-Chile Free Trade Agreement (FTA) creates separate categories of entry for citizens of each country to engage in a wide range of business and investment activities on a temporary basis. The FTA addresses four specific categories of temporary nonimmigrant admissions currently governed by U.S. immigration law. They are: business visitors, treaty traders and investors, intra-company transfers, and professional workers. These categories parallel the visa categories commonly referred to by the letter and numeral that denotes their subsection in § 101(a)(15) of the Immigration and Nationality Act: B–1 visitors, E treaty traders and investors, L–1 intra-company transferees, and H–1B professional workers.

B–1 nonimmigrants are visitors for business purposes and are required to be seeking admission for activities other than purely employment or hire. The difference between a business visitor and a temporary worker depends also on the source of the alien's salary. To be classified as a visitor for business, an alien must receive his or her salary from abroad and must not receive any remuneration from a U.S. source other than an expense allowance and reimbursement for other expenses incidental to temporary stay.

Foreign nationals who are treaty traders enter on the E–1 visa, while those who are treaty investors use the E–2 visa. Treaty trader is defined as one who seeks temporary admission to the United States solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he/she is a national. Treaty investor is defined as one who seeks temporary admission to the United States solely to develop and direct the operations of an enterprise in which he/she has invested, or of an enterprise in which he/she is actively in the process of investing a substantial amount of capital.

Intracompany transferees who work for an international firm or corporation in executive and managerial positions or have specialized product knowledge are admitted on L–1 visas. The prospective L–1 nonimmigrant must demonstrate that he or she meets the qualifications for the particular job as well as the visa category. The alien must have been employed by the firm for at least 6 months in the preceding 3 years in the capacity for which the transfer is sought.

Foreign nationals seeking H–1B visas for professional specialty workers go through a 2-step admissions process. Using a streamlined form of the Labor Condition Application (LCA) known as labor attestation, employers wishing to bring in an H–1B professional foreign worker first must attest in an application to the U.S. Department of Labor (DOL) that the employer will pay the nonimmigrant the greater of the actual wages paid other employees in the same job or the prevailing wages for that occupation; the employer will provide working conditions for the nonimmigrant that do not cause the working conditions of the other employees to be adversely affected; and, there is no strike or lockout. Firms categorized as H–1B dependent (generally if at least 15 percent of the workforce are H–1B workers) must also attest that they have attempted to recruit U.S. workers and that they have not laid off U.S. workers 90 days prior to or after hiring any H–1B nonimmigrants. The prospective H–1B nonimmigrants then must demonstrate that they have the requisite education and work experience for the posted positions as well as a baccalaureate degree (or equivalent experience) necessary to be considered a professional specialty worker. The admission of H–1B nonimmigrants is numerically limited, with a statutory cap of 65,000 that is temporarily increased to 195,000 through FY2003.

B. IMPLEMENTING LEGISLATION ON TEMPORARY PROFESSIONAL WORKERS

The USTR's legislation that would implement the Chile agreement was introduced July 15, 2003, as S. 1416. Title IV of this bill would amend several sections of the Immigration and Nationality Act. Foremost, the bills would amend § 101(a)(15)(H) of INA to carve out a portion of the H–1B visas—to be designated the H–1B–1 visa—for professional workers entering through the FTAs. In many ways the proposed FTA professional worker visa requirements parallel the H–1B visa requirements, notably having similar educational requirements. Although the implementing language, for the purpose of consistency with the actual FTA, requires "specialized knowledge" instead of "highly specialized knowledge" as stated in the current H–1B statute, the Administration's Statement of Administrative Action (SAA) clearly instructs that specialized knowledge and highly specialized knowledge are to be treated similarly. The bill also amends § 212 of INA to add a labor attestation requirement for employers bringing in potential FTA professional workers that is similar to the H–1B labor attestation statutory requirements. The additional attestation requirements for "H–1B dependent employers" currently specified in § 212 are not included in the labor attestation requirements for employers of the proposed FTA professional workers. The Administration omitted some of the requirements that are due to "sunset" at the end of FY 2003 because it did not know whether the provisions will continue after the current fiscal year, and did not wish to impose harsher conditions on trade partners than the United States currently imposes on other nations. However, nothing in the implementing language precludes application of future restrictions on these FTA visas so long as the restrictions do not conflict with the underlying terms of the FTA.

S. 1416 contains numerical limits of 1,400 new entries under the proposed FTA professional worker visa from Chile. The bill does not limit the number of times that an alien may renew the FTA professional worker visa on an annual basis, unlike H–1B workers who are limited to a total of 6 years. However, the bar on immigrant intent under INA § 214(b) applies here, whereas such ban does not apply to H–1B visa holders. This means that a holder of the FTA visa must show that he or she intends to return to Chile and has maintained substantial ties to Chile. Otherwise, the United States government may deny the renewal request. H–1B visa holders may intend to remain permanently in the United States.

There is also a numerical limitation on the entry of professional workers. The legislation limits the number of Chilean professional workers coming into the United States to 1,400 annually. Further, the Secretary of Homeland Security may set a cap lower than the 1,400 limit for any given year. Each FTA professional worker visa granted is charged against the total H–1B cap, whether it remains at 195,000, goes down to 65,000, or if a new cap is set after the current law sunsets. Moreover, after the fifth year, a number is charged against the overall H1–B cap for each year that the FTA professional worker visa is extended.

There is little debate on the investor (E) and business visitor (B–1) visa provisions of the FTA. Some members of the Committee have criticized that the intra-company transferee (L–1) provisions of the FTA do not permit labor certification or numerical limitations to be placed on these visas. However, neither the FTA nor S. 1416 precludes imposition of conditions that would be intended to thwart fraud or to punish fraudulent use of this visa category.

C. JUDICIARY COMMITTEE ACTION

On July 14, 2003, the Judiciary Committee held a hearing on the temporary entry provisions of the FTAs with Chile and Singapore. The USTR provided two witnesses, Regina Vargo and Ralph Ives, who were the lead negotiators with Chile and Singapore, respectively.

At the hearing, members of this Committee expressed serious concerns about the propriety of using trade agreements as the vehicle to enter into immigration agreements with foreign countries. The concerns were shared by Republican as well as Democrat senators.

On July 15, 2003, the Administration transmitted the entire implementing language for the two trade agreements, including the provisions for temporary entry of professional workers, business visitors, intra-company transferees, and investors.

On July 17, 2003, at an Executive Business Meeting of the Judiciary Committee, the members discussed the temporary entry provisions of both trade agreements. There was a bipartisan sentiment the trade agreements were not the appropriate vehicle to negotiate immigration provisions, and that such agreements usurped the prerogative of Congress to legislate immigration law. Despite the general displeasure, the Committee voted in favor of the temporary entry provisions.

The Committee voted in the following manner for both the Chile and the Singapore agreements:

YES	NO	PASS
Mr. Hatch	Mr. Sessions	Mr. Leahy
Mr. Grassley	Mr. Kohl	Mr. Biden
Mr. Specter	Mrs. Feinstein	Mr. Durbin
Mr. Kyl	Mr. Feingold	Mr. Edwards
Mr. DeWine		
Mr. Graham		
Mr. Craig		
Mr. Cornyn		
Mr. Chambliss		
Mr. Kennedy		
Mr. Schumer		

II. BUDGETARY IMPACT OF THE BILL

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1416—A bill to implement the United States-Chile Free Trade Agreement

Summary: S. 1416 would approve the free trade agreement (FTA) between the government of the United States and the government of Chile that was entered into on June 6, 2003. It would provide for tariff reductions and other changes in law related to implementation of the agreement, such as provisions dealing with dispute settlement, rules of origin, and safeguard measures for textile and apparel industries. The bill also would allow the temporary entry of certain business persons into the United States.

The Congressional Budget Office estimates that enacting the bill would reduce revenues by $5 million in 2004, by $38 million over the 2004–2008 period, and by $109 million over the 2004–2013 period, net of income and payroll tax offsets. The bill would not have a significant effect on direct spending or spending subject to appropriation. CBO has determined that S. 1416 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1416 is shown in the following table.

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN REVENUES [1]					
Reductions in tariff rates	−5	−7	−8	−9	−10
Civil penalties for attestation violations	*	*	*	*	*
Total	−5	−7	−8	−9	−10

[1] S. 1416 also would affect direct spending and spending subject to appropriation, but the amounts of those changes would be less than $500,000 a year.

Note.—*=Less than $500,000.

Basis of estimate

REVENUES

Under the United States-Chile agreement, all tariffs on U.S. imports from Chile would be phased out over time. The Tariffs would be phased out for individual products at varying rates according to one of the several different timetables ranging from immediate elimination to partial elimination over 10 years. According to the U.S. International Trade Commission (USITC), the U.S. collected $24 million in customs duties in 2002 on about $3.6 billion of imports from Chile. These imports consist mostly of edible fruits and nuts, articles of wood or copper, fish and crustaceans, and certain organic chemicals. Based on these data, CBO estimates that phasing out tariffs rates as outlined in the U.S.-Chile agreement would reduce revenues by $5 million in 2004, by $38 million over the 2004–2008 period, and by $109 million over the 2004–2013 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from Chile that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from Chile would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Chile would displace imports from other countries.

S. 1416 would also allow the Secretary of Labor to assess civil monetary penalties on employers for violations of the labor attestation process with respect to certain workers from Chile. CBO expects that any additional revenues collected as a result would amount to less than $500,000 in any year.

Direct spending

Title IV of the bill would establish a new nonimmigrant category for certain professional workers from Chile. The legislation would limit the number of annual entries under this category to 1,400, plus spouses and children. The Bureau of Citizenship and Immigration Services (BCIS) would charge fees of about $100 to provide nonimmigrant visas, so CBO estimates that the agency would collect less than $1 million annually in offsetting receipts (a credit against direct spending). The agency is authorized to spend such fees without further appropriation, so the net impact on BCIS spending would not be significant.

Under current law, the Department of State also collects $100 application fee for nonimmigrant visas. These collections are spent on border security and consular functions. CBO estimates that the net budgetary impact would be less than $500,000 a year.

Spending subject to appropriation

Title I of S. 1416 would authorize the appropriation the necessary funds for the Department of Commerce to pay the United States' share of the costs of the dispute settlement procedures established by the agreement. Based on information from the agency, CBO estimates that implementing this provision would cost $100,000 in 2004, and $250,000 in each of the following years, subject to the availability of appropriated funds.

Title III would require the International Trade Commission (ITC) to investigate claims of injury to domestic industries as a result of the FTA. The ITC would have 120 days to determine whether a domestic industry has been injured, and if so, would recommend the necessary amount of import relief. The ITC would also submit a report on its determination to the President. According to the ITC, similar FTAs have resulted in only a handful of cases each year, at an average cost of about $200,000 per investigation. Based on this information, CBO estimates the bill would have no significant effect on spending subject to appropriation.

Summary of effect on revenues and direct spending: The overall effects of S. 1416 on revenues and direct spending are shown in the following table.

	By fiscal year, in millions of dollars—										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in receipts	0	−5	−7	−8	−9	−10	−11	−13	−14	−16	−18
Changes in outlays	*	*	*	*	*	*	*	*	*	*	*

Note.—*=Less than $500,000.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Revenues: Annabelle Bartsch. Federal spending: Dispute Settlements—Melissa Zimmerman; Immigration—Mark Grabowicz, Christi Hawley-Sadoti, and Sunita

D'Monte. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; and Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

III. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF SENATORS FEINSTEIN AND LEAHY

Article 14.1 et seq. and Annex 14.3 of the United States-Chile Free Trade Agreement (FTA) contains provisions governing the temporary entry of foreign nationals from Chile. Specifically, the agreement would require the United States to grant temporary entry to business persons under categories that parallel four nonimmigrant visa categories: the B–1 business visitor visa, E–1 treaty trader or investor visa, the L–1 intra-company transfer visa, and the H–1b professional visa. With the exception of the H–1b visa equivalent, the trade agreement does not impose numerical limits on the number of nonimmigrant visas that may be issued in a given year. In fact, the trade agreement expressly prohibits numerical limits on the visa categories. In addition, neither party to the agreement would be permitted to impose labor certification tests or other similar conditions of entry upon foreign nationals of Chile.

On July 15, 2003, despite concerns expressed by members of Congress over the immigration provisions, the President transmitted to Congress legislation to implement the U.S.-Chile agreement. The legislation was subsequently introduced in the Senate as S.1416. Title IV of the legislation establishes a new H–1B(1) category for the temporary entry of foreign professionals from Chile.

BINDING IMMIGRATION POLICY SHOULD NOT BE ENACTED IN TRADE AGREEMENTS

Trade agreements are not the appropriate vehicle for broadening or constraining immigration policy. Such agreements are meant to have a permanent impact. They cannot be amended or modified by subsequent legislation, should Congress choose for other compelling reasons to alter those provisions. The end result would be a patchwork of inconsistent immigration laws that may not serve our national interest.

The authority to establish immigration laws and policies has historically rested with Congress. Article I, section 8, clause 4 of the Constitution provides that Congress shall have power to "establish a uniform Rule of Naturalization." The Supreme Court has long interpreted this provision of the Constitution to grant Congress plenary power over immigration policy.

As the Court found in *Galvan* v. *Press,* 347 U.S. 522, 531 (1954), "that the formulation of policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." And, as the Court found in *Kleindienst* v. *Mandel,* 408 U.S. 753, 766

(1972) (quoting *Boutilier* v. *INS,* 387 U.S. 118, 123 (1967)), "[t]he Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.'"

The practice of trading immigration visas for business opportunities restricts the ability of Congress to legislate and the Executive Branch to administer U.S. immigration law and protect the interests of American and immigrant workers. Moreover, such agreements usually involve negotiating legally binding provisions that limit the ability of policymakers to correct abuses or deficiencies in our immigration system.

Because the Office of the United States Trade Representative has agreed to binding commitments on the movement of people, congressional measures to correct abuses in a given visa program could be deemed inconsistent with the U.S.'s obligations under the agreement, and thus, subject to penalty. Without express authority from Congress, the U.S. Trade Representative should not be permitted to negotiate new visa categories and impose new obligations on our temporary entry system in the trade agreements.

THE UNITED STATES TRADE REPRESENTATIVE HAS NOT DEMONSTRATED A NEED FOR ADDITIONAL TEMPORARY ENTRY PROVISIONS

Our current immigration laws accommodate the entry of foreign workers, providing employers access to a broad range of temporary professionals. Each year, hundreds of thousands of visas are issued to temporary workers and their family members. The growth in the number of foreign professionals admitted for temporary stays reflects global economic trends.

Not only has the U.S. Trade Representative not demonstrated a need for negotiating the temporary entry provisions, the Office did not provide any evidence that current immigration law would be a barrier to meeting the U.S. obligation to further trade in goods and services. In fact, current law is sufficient to accommodate these obligations as evidenced by the millions of temporary workers that enter the United States each year.

The principal nonimmigrant visa categories under which temporary business professionals enter are the B–1 visa for business visitors, the E visa for traders and investors entering under bilateral treaties, the H–1b for professionals working in specialty occupations and the L visa for intracompany transfers. These categories parallel the categories of temporary admissions under the U.S.-Chile Free Trade Agreement.

In Fiscal Year 2002, 4,376,935 foreign nationals entered under the B–1 temporary business visitor visa; 171,368 entered under the E treaty-trader visa; another 313,699 entered under the L intracompany transfer visa; and an additional 370,490 entered the U.S. under the H–1b professional visa. In all, the United States admitted a total of 5,232,492 foreign nationals under the current temporary visa categories.

While the Free Trade Agreement with Chile specifically expresses the desire to facilitate the temporary entry of persons fitting these categories, only the E visa category would need to be modified in order to meet the obligations of the U.S. and Chile.

Thus, with the possible exception of the E visa, no evidence has been presented to substantiate the need to include the temporary entry provisions in the trade agreement.

Members of the Judiciary committee asked why the U.S. Trade Representative believed it necessary to include immigration provisions in a fast-tracked agreement. The Office of the United States Trade Representative offered the following response: "The international mobility of business persons, whether in their personal capacity or as employees providing services, has become an increasingly important component of competitive markets for suppliers and consumers alike."

The assertion that there is a direct link between the temporary entry of "professionals" and increased market access for corporations involved in foreign direct investment or trade in services, as the U.S. Trade Representative claims, is questionable. Companies that use the new professional visa programs would not have to be involved in international trade and investment in any way. They can be domestic companies, providing goods or services to domestic consumers. The only global feature about these companies is their workforce. Bringing in additional professionals outside of our traditional H–1b framework has little to do with eliminating barriers to services trade and foreign direct investment, and thus cannot be justified as a logical extension of the limited authority granted to the U.S. Trade Representative by the Trade Promotion Authority Act.

FREE TRADE VISAS SHOULD NOT BE INDEFINITELY RENEWABLE

Under the trade agreement, the visas for temporary business persons entering under all the categories in the agreement are indefinitely renewable. This, in effect, transforms what on paper is a temporary entry visa program into a permanent visa program.

While the trade agreement requires professionals who enter under its terms count against the overall cap imposed on H–1b visas, each visa holder would be permitted to remain in the United States for an indefinite period of time. Thus, employers could renew their employees' visas each and every year under the agreements, with no limits, while also bringing in new entrants to fill up the annual numerical limits for new visas. This effectively would prevent Congress from limiting the duration of such visas when it is in the national interest to do so.

INSUFFICIENT PROTECTIONS FOR WORKERS—BOTH DOMESTIC AND FOREIGN TEMPORARY

Today 15.3 million people are unemployed, underemployed, or have given up looking for work. Of that number, 9.4 million are considered officially unemployed. These unemployment figures are the highest in almost a decade. The average person has been out of work nearly 20 weeks, one of the longest periods since 1948.

While employers are generally good actors, the provisions as drafted in the trade agreement would increase the number of temporary foreign workers exposed to exploitation and leave more to face an uncertain future. By making the visas indefinitely extendable these workers will remain in limbo with year-to-year extensions of their stay.

Despite these concerns, the U.S. Trade Representative has seen fit to push through a free trade agreement with immigration provisions that significantly weaken the worker protections under current immigration law. The provisions would expand the types of occupation currently covered under H–1B to include: management consultants, disaster relief claims adjusters, physical therapists, and agricultural managers—professions that do not require a bachelor's degree. (U.S.-Chile Free Trade Agreement, Appendix 14.3(D)(2), p. 14–12.) Nor would employers be required to demonstrate a shortage of workers in these professions before hiring foreign nationals under the agreement.

Essentially, these provisions would open the door to the inclusion of new occupations in the trade agreement that are not currently included in the H–1b program. The definition of "specialty occupation" in the H–1b program is specifically designed to ensure that employers do not abuse the H–1b program to undercut American workers in occupations where there is no skill shortage. The H–1b program defines a "specialty occupation" as one that requires the application of a "body of highly specialized knowledge." The free trade agreement with Chile and implementing legislation, on the other hand, broadens the definition of "specialty occupation" to include any job that requires the application "of a body of specialized knowledge." Thus, the agreement omits the important qualifier that the intending foreign professional's knowledge be highly specialized, thus lowering the standard for admission. This is unacceptable.

Moreover, unlike the provisions in the agreement, current law requires "H–1b dependent" employers seeking temporary workers to attest that they are actively trying to recruit U.S. workers for the positions filled by the foreign workers. They must also attest that they have not laid off U.S. workers 90 days prior to or after hiring H–1b nonimmigrants. These additional requirements are not included in the agreement with Chile.

Neither the free trade agreement nor the implementing legislation require the employer to attest and the Department of Labor to certify that employer has not laid off a U.S. worker either 90 days before or after hiring the foreign worker before the foreign national is permitted to enter the U.S. A labor certification would require the Department of Labor to undertake an investigation to verify that the employer's attestation is accurate and truthful before permitting the entry of the foreign national. Labor certifications are expressly prohibited under the trade agreement. Under the implementing provisions, the Labor Department may review attestations only for completeness and obvious inaccuracies and must provide the certification within seven days.

Neither the trade agreement nor the implementing language provide the Department of Labor the authority to initiate investigations or conduct spot checks at work sites to uncover instances of U.S. worker displacement and other labor violations pertaining to the entry of foreign workers. This is particularly troublesome, given that in the last two fiscal years, the Department of Labor investigated 166 businesses with H–1b violations. As a result of those investigations, H–1b employers were required to pay more than $5 million in back pay awards to 678 H–1b workers. This suggests a compelling need to exercise greater oversight over employers reliant upon foreign labor.

NO LIMITATIONS ON OTHER VISA CATEGORIES

While the Administration has included a cap of 1,400 on the foreign professional visa category, there are other categories under which an unlimited number of foreign nationals from Chile could enter: the B–1 visitor visa; the E-treaty/investor visas; and L–1 intracompany visas (which have recently been the subject of investigations). None of these categories are numerically limited under the agreement, and once enacted, Congress may not subsequently impose caps on these categories for nationals entering pursuant to this agreement.

Moreover, the agreement expressly prohibits the imposition of labor certification tests or other similar conditions on temporary entries under the B–1, E–1 and L–1 visa categories. While Congress could certainly correct some aspects of the law implementing the trade agreements, it would be limited in what it could do by the underlying trade agreement itself.

For example, if Congress decided to better protect U.S. businesses and workers by amending the laws governing the L–1 visa category to require a labor certification or a numerical limit before a foreign worker from Chile could enter the U.S., it would not be able to do so. Both are plausible options for dealing with perceived abuses in the visa category. The trade agreement with Chile states: "Neither party may:

> (a) As a condition for temporary entry under paragraph 1, require labor certifications, or other procedures of similar effect; or
>
> (b) Impose or maintain any numerical restriction relating to temporary entry under paragraph 1." [U.S.-Chile Free Trade Agreement, Chapter 14, Annex 14.3, section 3, p. 14–6.]

These provisions under the trade agreements would significantly limit Congress' authority to: (a) establish more stringent labor protections when warranted; and (b) limit the number of visas that could be issued to nationals of Chile, should it deem that it is in the national interest.

The negotiation of temporary entry provisions demands Congressional oversight and input and public scrutiny, especially during a time when national security issues are of such paramount concern to us all. Congress should not relinquish its traditional authority over immigration power to any administration, to other countries or to a panel of international arbiters.

Behind the abstraction, the theories, and the statistics of the Free Trade Agreement and its implementing provisions, there is one inescapable factor: the real faces of the working men and women of this country, and what will happen to them. For this reason, we dissent from the Committee's majority views on the temporary entry provisions of the U.S.-Chile Free Trade Agreement.

DIANNE FEINSTEIN.
PATRICK J. LEAHY.

ADDITIONAL VIEWS OF SENATOR KENNEDY

I voted in favor of the temporary entry provisions of the Singapore and Chile Free Trade Agreements, but I have serious concerns about the inclusion of immigration provisions in trade agreements.

The implementing legislation submitted to the Committee reflects a substantial improvement over the provisions originally shown to the Committee. Many of us had major concerns about the lack of worker protections in these agreements, but in the several days before S. 1416 and S. 1417 were transmitted to Congress, bipartisan members of the House and Senate Judiciary Committees succeeded in making improvements in this legislation to strengthen these protections.

The Constitution clearly gives Congress authority over immigration issues and trade agreements should not change immigration law without House and Senate approval. The Trade Promotion Authority process used to implement free trade agreements requires consultations with Congress, but not the approval of Congress, amendments to implementing legislation are prohibited after the legislation is transmitted to Congress.

Although the number of workers who come to the United States from Chile and Singapore under these agreements will be relatively low, the Administration intends to negotiate similar agreements with Morocco, Central American nations, South Africa, Australia and other countries. These agreements with Singapore and Chile should not be allowed to become a precedent for the Administration to bypass Congress on immigration issues.

Trade agreements are not an acceptable venue for changing immigration law unless appropriate approval by Congress has been obtained to make such changes.

EDWARD M. KENNEDY.

ADDITIONAL VIEWS OF SENATOR KYL

I voted for the entry provisions of the U.S.-Chile and U.S.-Singapore Free Trade Agreements because I understand the importance of passing the legislation to implement these underlying trade agreements. They would both be jeopardized if forced to be renegotiated. I would like to point out, however, that I am troubled that the U.S. Trade Representative negotiated the immigration provisions, and proposed substantive changes to immigration law, without any real input from the Congress.

Broadly speaking, I am concerned that such U.S. immigration law was changed not just by an executive branch of the United States, but by other countries. It is also troubling that such changes were negotiated by the United States Trade Representative (USTR), and not by the U.S. Congress, even though Congress is solely responsible for regulating the nation's immigration policy, including the admission of foreign nationals. Finally, as we prepare to reauthorize the INA's expiring H1–B law, changes to the H1–B law included in these agreements could serve as an unwelcome precedent for future congressional negotiations on the H1–B visa policy.

I would note on the positive side, that within the immigration requirements included in the treaties with Chile and Singapore, numerous improvements to the implementing legislation have been made. The agreements allow for the entry of 5,400 Singapore nationals and 1,400 Chile nationals to enter the United States under the H1–B visa. The fact that the proposed visa carve-outs are included in the existing H1–B category, and that the Chile and Singapore numbers must be included in the overall H1–B limit, are welcome improvements over the original legislation's draft. In the original implementing legislation draft, a separate visa category (an H1–B(1)) was created that would have prevented any future changes in our H1–B laws from affecting the proposed new visas for Chile and Singapore nationals. It is also good that any future improvements to the H1–B law will also be applicable to these visas. I am also pleased that the legislation requires that H1–B visas granted to Chile and Singapore nationals be included in the nation's overall H1–B cap.

Other improvements from the original draft include a ban on dual intent, in that a potential employee must be able to prove that he intends to return home. Current H1–B visa holders do not have to prove that they ever intend to return home. Another improvement is the requirement that an attestation be completed by the sponsoring employer that he sought out available U.S. workers before offering the job to the person from Chile or Singapore, just as current H1–B laws require. Moreover, an additional attestation must be completed after the worker has been working here for three years, which strengthens current law. The legislation, unlike the original draft, also requires that, as does current H1–B law, a fee to be paid by the sponsoring employer. Other labor assurances were also included in the final bill.

I am concerned, however, that the implementing legislation still strays from our current H1–B law in numerous ways. First, under current H1–B policy, workers can only adjust status twice and then must adjust status or depart. Workers from Chile and Singapore, however, will adjust annually—and, they can adjust annually forever. Admittedly, such workers will be required to prove that they intend to eventually return to home country but a worker could conceivably prove that every year for the next 25 years. Such workers who seek renewal will also not be included in the H1–B cap until the fifth year they apply for a renewal of their visa.

There is also no requirement in the implementing legislation that H1–B-dependent employers (15 percent or more H1–B workers) in the United States undergo additional attestational requirements before being allowed to bring in Chilean or Singaporian workers. Current H1–B law requires that H1–B-dependent employers show that they are "actively trying to recruit U.S. workers and that they have not laid off workers in the last 90 days" but there is no such requirement included for H1–B-dependent employers in the U.S.

Immigration law is complicated, not only from a legal perspective, but from a social and economic perspective. The implementing legislation was improved a good deal before it was sent to us. But, changes to the immigration policies established by Congress should not have been a part of the underlying trade negotiations. I would hope that the USTR would commit that any future trade agreements negotiated and completed under its watch include minimal, and acceptable to Congress, changes to our immigration laws. In order to move these agreements forward and hopefully complete action on them before the August recess, I have voted them out of committee. I would urge, again, that in future trade negotiations that we concentrate on the issue of trade and leave changes to immigration law to the Congress to work on for the good of country. Thank you.

JON KYL.

ADDITIONAL VIEWS OF SENATOR SESSIONS

The legislation that we have before use is deeply troubling. The U.S. Trade Representative, by implementing new immigration provisions in treaty negotiations, has usurped the role of the legislative branch, without any consent from this Congress.

The inclusion of immigration provisions in the Free Trade Agreements with Chile and Singapore interferes with Congress' plenary power to regulate the nation's immigration policy. This power belongs to Congress alone and includes both the temporary and permanent admissions of foreign nationals into the United States.

Article I, section 8, clause 4 of the Constitution provides that Congress shall have power to "establish a uniform Rule of Naturalization." The Supreme Court has long interpreted this provision of the Constitution to grant Congress plenary power over immigration policy. As the Court found in *Galvan* v. *Press,* 347 U.S. 522, 531 (1954), "the formulation of policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government." And, as the Court held in *Kleindienst* v. *Mandel,* 408 U.S. 753, 766 (1972) (quoting *Boutilier* v. *INS,* 386 U.S. 123 (1967)), "[t]he Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.' "

As a Senator of the Committee, which has jurisdiction over immigration policy, it is my duty to preserve the plenary power of Congress to make immigration policy—I am dedicated to opposing any erosions of that power.

At the hearing on Monday, the witness for the U.S. Trade Representative, Mrs. Regina Vargo, was asked what legal authority that USTR was relying on as a basis for including immigration law negotiations in trade treaties. The USTR witness responded by differentiating between temporary and permanent entries into the United States, stating that because the Chile and Singapore Free Trade Agreements only contained provisions regarding temporary entries of foreign persons, the USTR was acting within the bounds of its negotiating authority. This is not the case.

By negotiating and including immigration law provisions in a binding bilateral treaty that Congress does not have the power to amend, the USTR has established a dangerous precedent that will not be tolerated in future trade agreements.

It would have been especially appropriate for the USTR to ensure that employers who repeatedly use the visa programs established under the trade agreements abide by all laws governing the entry of the foreign workers.

The legislation before use today makes the H–1B requirements under the Chile and Singapore agreements weaker than the requirements for other H–1B workers and may restrict Congress' ability to reform the L–1 visa program. Specifically, the legislation—

- Permits the admission of up to 5,400 professionals from Singapore and up to 1,400 professionals from Chile each year;
- Permits the almost unlimited renewal of these visas each year, which could have the effect of turning a temporary entry visa program into a permanent visa program; and
- Permits the entry of dependent spouses and children to join these professionals without their entry into the U.S. being subject to a numerical cap.

If the U.S. Trade Representative continues to negotiate treaty terms such as the ones before us today, I will be unable to support them.

I am concerned with the current unemployment rate among U.S. workers and I am dedicated to preserving their jobs. The abuse surrounding some immigration visas is contributing to a record level of unemployment for U.S. high-tech workers. I welcome, when appropriate, foreign industries within our borders, and, when appropriate, I fully support foreign workers coming here to work. I believe the only way to protect the job market for American workers is to preserve Congress' plenary power to make laws that affect the ability of foreign workers to displace American workers from their jobs.

Any provision of a future trade agreement that restricts the ability of this Congress to protect U.S. jobs will not be looked upon favorably.

I have great respect and appreciation for both Chile and Singapore. They are great allies of this country and I want, very much, to support the Free Trade Agreements that have been negotiated with them. In this single instance, however, my support of the trade provisions of the underlying treaty agreements should not be read as support of the immigration policies included therein or included in the implementing legislation.

We have seen some improvement from the provisions included in the initial draft, and I though the administration had heard our message loud and clear. The answers to written follow up questions, however, do not indicate that the message was clear enough. My support for the trade agreements should not be questioned, but the assertion that the USSR now has the authority to effectively legislate in the area of immigration was detrimental to my support of the immigration provisions included therein. I deeply desire to support Chile and Singapore and had fully planned on voting for the Free Trade Agreements at every turn. However, in light of the answers that we received this morning from the USTR—answers to the written questions submitted by Senators Feinstein, Kennedy and Graham after Monday's hearing—I cannot support the committee vote concerning the immigration provisions.

I continue to rely fully on the verbal guarantees we have received that this process will not happen again in treaty negotiations. I look forward to working with colleagues from each nation, but in particular, the businessmen and women who are engaged in the expansion of trade between our respective business communities. In Alabama we are indeed fortunate that several company's from Singapore found opportunities which they developed into thriving businesses. One such business is located in my home town of Mobile, Alabama. Mobile Aerospace Engineering (MAE) is Singapore-owned, but more importantly it is a vibrant business employing over 1,000 local workers. MAE is a community leader not just in the number of its employees, but in its community outlook and community involvement. My visits have revealed that Singapore is indeed a valued economic partner and trusted ally.

I believe the Governments of Singapore and Chile clearly understand the message my colleagues and I communicated to the USTR. Our commitment to trade is not diminished; our message however is quite clear.

JEFF SESSIONS.

ADDITIONAL VIEWS OF SENATOR CHAMBLISS

[Excerpted from page 36 of the transcript of the hearing held on July 14, 2003, by the Committee on the Judiciary regarding the temporary entry provisions of the Free Trade Agreements with Chile and Singapore.]

Senator CHAMBLISS. Mr. Chairman, as Chairman of the Immigration Subcommittee, Senator Kennedy and I have a hearing set next week to discuss H1–B and L–1 visa programs. There is the potential that after that hearing and subsequent thereto and other hearings or whatever, we may be talking about reducing the numbers available under those programs, for various reasons.

I think for USTR to come in and to, in effect, legislate immigration policy, as Senator Feinstein has said, is wrong. I am going to vote for it to get it out of Committee. I am not committed to voting for it on the floor.

It may be that we need USTR to go back—if they are planning on, as this article indicates, bringing this type of legislation forward in every agreement they negotiate under Fast Track, then we have got a problem. And I think it needs to be addressed now with the first agreements, and USTR needs to know that this Subcommittee has jurisdiction over immigration and we intend to assert it.

SAXBY CHAMBLISS.

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

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

TARIFF ACT OF 1930

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TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

* * * * * * *

SEC. 311. BONDED MANUFACTURING WAREHOUSES.

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided,* That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further,* That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

No flour, manufactured in a bonded manufacturing warehouse from wheat imported from ninety days after the date of the enactment of this Act, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the appropriate customs officer of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided,* That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouse under the Act of March 24, 1874, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected by law if such waste or by-products were imported from a foreign country: *Provided,* That all waste material may be destroyed under Government supervision. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

A careful account shall be kept by the appropriate custom officer of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturer containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse for the sole purpose of export therefrom: *Provided,* That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

The provisions of section 3433 of the Revised Statutes shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

Distilled spirits and wines which are rectified in bonded manufacturing warehouse, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided,* That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further,* That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier.

No article manufactured in a bonded warehouse from materials that are goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to a NAFTA country, as defined in section 2(4) of that Act, without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid before the 61st day after the date of exportation, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

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

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

No article manufactured in a bonded warehouse from materials that are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to Chile without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid before the 61st day after the date of exportation, except that the duty may be waived or reduced by—

(1) 100 percent during the 8-year period beginning on January 1, 2004;

(2) 75 percent during the 1-year period beginning on January 1, 2012;

(3) 50 percent during the 1-year period beginning on January 1, 2013; and

(4) 25 percent during the 1-year period beginning on January 1, 2014.

SEC. 312. BONDED SMELTING AND REFINING WAREHOUSES.

(a) * * *

(b) The several charges against such bond may be canceled in whole or in part—

(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c); ⟦except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

⟦(B) the total amount of customs duties paid to the NAFTA country on the product, or⟧ *except that—*

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

on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

(ii) the total amount of customs duties paid to the NAFTA country on the product, and

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

(i) 100 percent during the 8-year period beginning on January 1, 2004,

(ii) 75 percent during the 1-year period beginning on January 1, 2012,

(iii) 50 percent during the 1-year period beginning on January 1, 2013, and

(iv) 25 percent during the 1-year period beginning on January 1, 2014, or

* * * * * * *

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), and upon withdrawal from such other warehouse for exportation or domestic consumption the provisions of this section shall apply; ⟦except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

⟦(B) the total amount of customs duties paid to the NAFTA country on the product, or⟧ *except that—*

(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be

paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

(ii) the total amount of customs duties paid to the NAFTA country on the product, and

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

(i) 100 percent during the 8-year period beginning on January 1, 2004,

(ii) 75 percent during the 1-year period beginning on January 1, 2012,

(iii) 50 percent during the 1-year period beginning on January 1, 2013, and

(iv) 25 percent during the 1-year period beginning on January 1, 2014, or

* * * * * * *

(d) Upon the exportation of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; ⟦except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 508(b)(2)(B)) in an amount not to exceed the lesser of—

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

⟦(2) the total amount of customs duties paid to the NAFTA country on the product.⟧ *except that—*

(1) in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, charges against the

bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 508(b)(2)(B)) in an amount not to exceed the lesser of—

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

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

(2) in the case of a withdrawal for exportation to Chile, if any of the imported metal-bearing materials are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, charges against the bond shall be paid before the 61st day after the date of exportation, and the bond shall be credited in an amount equal to—

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

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

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

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

* * * * * * *

SEC. 313. DRAWBACK AND REFUNDS.

(a) * * *

* * * * * * *

(j) UNUSED MERCHANDISE DRAWBACK.—

(1) * * *

* * * * * * *

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

(B) Beginning on January 1, 2015, the exportation to Chile of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (5) of section 203(a) of the United States-

Chile Free Trade Agreement Implementation Act, shall not constitute an exportation for purposes of paragraph (2). The preceding sentence shall not be construed to permit the substitution of unused drawback under paragraph (2) of this subsection with respect to merchandise described in paragraph (2) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.

* * * * * * *

【(n)】 *(n) REFUNDS, WAIVERS, OR REDUCTIONS UNDER CERTAIN FREE TRADE AGREEMENTS.*—(1) For purposes of this subsection and subsection (o)—

(A) * * *

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

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

(D) the term "good subject to Chile FTA drawback" has the meaning given that term in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.

* * * * * * *

(4)(A) For purposes of subsections (a), (b), (f), (h), (j)(2), (p), and (q), if an article that is exported to Chile is a good subject to Chile FTA drawback, no customs duties on the good may be refunded, waived, or reduced, except as provided in subparagraph (B).

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

(i) 100 percent during the 8-year period beginning on January 1, 2004;

(ii) 75 percent during the 1-year period beginning on January 1, 2012;

(iii) 50 percent during the 1-year period beginning on January 1, 2013; and

(iv) 25 percent during the 1-year period beginning on January 1, 2014.

【(o)】 *(o) SPECIAL RULES FOR CERTAIN VESSELS AND IMPORTED MATERIALS.*—(1) For purposes of subsection (g), if—

(A) * * *

* * * * * * *

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

(A) a vessel is built for the account and ownership of a resident of Chile or the Government of Chile, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act,

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

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

(A) 100 percent during the 8-year period beginning on January 1, 2004;

(B) 75 percent during the 1-year period beginning on January 1, 2012;

(C) 50 percent during the 1-year period beginning on January 1, 2013; and

(D) 25 percent during the 1-year period beginning on January 1, 2014.

* * * * * * *

SEC. 508. RECORDKEEPING.

(a) * * *

(b) ⟦EXPORTATIONS TO FREE TRADE COUNTRIES.—⟧ *EXPORTATIONS TO NAFTA COUNTRIES.—*

(1) * * *

(2) EXPORTS TO NAFTA COUNTRIES.—

(A) * * *

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

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

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

* * * * * * *

(f) CERTIFICATES OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-CHILE FREE TRADE AGREEMENT.—

(1) DEFINITIONS.—In this subsection:

(A) RECORDS AND SUPPORTING DOCUMENTS.—The term "records and supporting documents" means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

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

(ii) if applicable, the purchase, cost, and value of, and payment for, all materials, including recovered goods, used in the production of the good; and

(iii) if applicable, the production of the good in the form in which it was exported.

(B) CHILE FTA CERTIFICATE OF ORIGIN.—The term "Chile FTA Certificate of Origin" means the certification, established under article 4.13 of the United States-Chile Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO CHILE.—Any person who completes and issues a Chile FTA Certificate of Origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the Certificate or copies thereof).

(3) RETENTION PERIOD.—Records and supporting documents shall be kept by the person who issued a Chile FTA Certificate of Origin for at least 5 years after the date on which the certificate was issued.

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

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

(2) the general record keeping penalty that applies under the customs laws of the United States.

* * * * * * *

SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.

(a) * * *

* * * * * * *

(g) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER UNITED STATES-CHILE FREE TRADE AGREEMENT.—If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may deny preferential tariff treatment under the United States-Chile Free Trade Agreement to entries of identical goods imported by that person until the person establishes to the satisfaction of the Bureau of Customs and Border Protection that representations of that person are in conformity with such section 202.

* * * * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) * * *

* * * * * * *

【(d)】 *(d) GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.—*Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act *or section 202 of the United States-Chile Free Trade Agreement Implementation Act* for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) a written declaration that the good qualified under 【those】 *the applicable* rules at the time of importation;

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1))*, or other certificates of origin, as the case may be*; and

* * * * * * *

SEC. 562. MANIPULATION IN WAREHOUSE.

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same; except that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom—

(1) * * *

* * * * * * *

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

(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise that—

(A) * * *

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

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

(6)(A) without payment of duties for exportation to Chile, if the merchandise is of a kind described in any of paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act; and

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

(i) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to, or deductions from, the final appraised value as may be necessary by reason of a change in condition, and

(ii) duty shall be paid on the merchandise before the 61st day after the date of exportation, except that such duties may be waived or reduced by—

(I) 100 percent during the 8-year period beginning on January 1, 2004,

(II) 75 percent during the 1-year period beginning on January 1, 2012,

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

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

* * * * * * *

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) * * *

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(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

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

[(6)**]** *(7)* SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

* * * * * * *

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

(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a Chile FTA Certificate of Origin (as defined in section 508(f)(1)(B) of this Act that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

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

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

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

(B) the person immediately and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certificate.

* * * * * * *

SECTION 3 OF THE ACT OF JUNE 18, 1934

(Commonly known as the "Foreign Trade Zones Act")

SEC. 3. (a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided,* That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further,* That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further,* That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further,* That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) * * *

* * * * * * *

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of the Tariff Act of 1930, as amended: *Provided further,* That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraph 367 or paragraph 368 of the Tariff Act of 1930, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this Act prior to July 1, 1949: *Provided further,* That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section, may, on such importation, be entered as American goods returned: *Provided further,* That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 2(4) of that Act, without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930) in an amount that does not exceed the lesser of (1) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country: *Provided further,* That if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, no article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada during the period such Agreement is in operation without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested**[**.**]***: Provided, further, That no merchandise that consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to Chile without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that the customs duty may be waived or reduced by (1) 100 percent during the 8-year period beginning on January 1, 2004; (2) 75 percent during the 1-year period beginning on January 1, 2012; (3) 50 percent during the 1-year period beginning on January 1, 2013; and (4) 25 percent during the 1-year period beginning on January 1, 2014.*

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SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * * * *

(12) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Chile Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

* * * * * * *

SECTION 202 OF THE TRADE ACT OF 1974

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

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

* * * * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, ⟦and⟧ title II of the United States-Jordan Free Trade Area Implementation Act*, and title III of the United States-Chile Free Trade Agreement Implementation Act*. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

* * * * * * *

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(H) an alien (i)(b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section [212(n)(1), or (c)] *212(n)(1), or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A), who is engaged in a specialty occupation described in section 214(i)(3), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1), or (c)* who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

* * * * * * *

TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) * * *

* * * * * * *

(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections ❲(n)(1)(A)(i)(II) and (a)(5)(A)❳ *(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)* in the case of an employee of—

(A) * * *

* * * * * * *

❲(p)❳ *(s)* In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1641(c)).

(t)(1) No alien may be admitted or provided status as a nonimmigrant under section 101(a)(15)(H)(i)(b1) in an occupational classification unless the employer has filed with the Secretary of Labor an attestation stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(H)(i)(b1) wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the attestation; and

(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

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

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought; or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which nonimmigrants under section 101(a)(15)(H)(i)(b1) are sought.

(D) A specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(2)(A) The employer shall make available for public examination, within one working day after the date on which an attestation under this subsection is filed, at the employer's principal place of business or worksite, a copy of each such attestation (and such accompanying documents as are necessary).

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

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

(C) The Secretary of Labor shall review an attestation filed under this subsection only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an attestation is incomplete or obviously inaccurate, the Secretary of Labor shall provide the certification described in section 101(a)(15)(H)(i)(b1) within 7 days of the date of the filing of the attestation.

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

(B) Under the process described in subparagraph (A), the Secretary of Labor shall provide, within 30 days after the date a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States

Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraph (1)(C) or (1)(D), or a misrepresentation of material fact in an attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), or 101(a)(15)(H)(i)(b1) during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an attestation, or a violation of clause (iv)—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate; and

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

(iii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an attestation, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition or application supported by the attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), or

101(a)(15)(H)(i)(b1) during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an attestation under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 101(a)(15)(H)(i)(b1) who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an attestation under this subsection to require a nonimmigrant under section 101(a)(15)(H)(i)(b1) to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary of Labor shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) designated as a full-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated

on the attestation consistent with the rate of pay identified on the attestation.

(III) In the case of a nonimmigrant under section 101(a)(15)(H)(i)(b1) who has not yet entered into employment with an employer who has had approved an attestation under this subsection with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States, or 60 days after the date the nonimmigrant becomes eligible to work for the employer in the case of a nonimmigrant who is present in the United States on the date of the approval of the attestation filed with the Secretary of Labor.

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

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to a nonimmigrant under section 101(a)(15)(H)(i)(b1) an established salary practice of the employer, under which the employer pays to nonimmigrants under section 101(a)(15)(H)(i)(b1) and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this Act to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection to fail to offer to a nonimmigrant under section 101(a)(15)(H)(i)(b1), during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and non-cash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

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

(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condi-

tion of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation. The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(F) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

(4) For purposes of this subsection:

(A) The term "area of employment" means the area within normal commuting distance of the worksite or physical location where the work of the nonimmigrant under section 101(a)(15)(H)(i)(b1) is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an attestation with respect to one or more nonimmigrants under section 101(a)(15)(H)(i)(b1) by an employer, the employer is considered to "displace" a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C)(i) The term "lays off", with respect to a worker—

(I) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(D) The term "United States worker" means an employee who—

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

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207 of this title, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

(b) Every alien ⟦(other than a nonimmigrant described in subparagraph (H)(i), (L), or (V) of section 101(a)(15))⟧ *(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)* shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15). An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b).

(c)(1) The question of importing any alien as a nonimmigrant under ⟦section 101(a)(15)(H), (L), (O), or (P)(i)⟧ *subparagraph (H), (L), (O), or (P)(i) of section 101(a)(15) (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1))* in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).

*   *   *   *   *   *   *

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

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

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

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

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(s).

*   *   *   *   *   *   *

(g)(1) * * *

*   *   *   *   *   *   *

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

(B)(i) The Secretary of Homeland Security shall establish annual numerical limitations on approvals of initial applications by aliens for admission under section 101(a)(15)(H)(i)(b1).

(ii) The annual numerical limitations described in clause (i) shall not exceed 1,400 for nationals of Chile for any fiscal year. For purposes of this clause, the term "national" has the meaning given such term in article 14.9 of the United States-Chile Free Trade Agreement.

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

(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under section 101(a)(15)(H)(i)(b) may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

(C) The period of authorized admission as a nonimmigrant under section 101(a)(15)(H)(i)(b1) shall be 1 year, and may be extended, but only in 1-year increments. After every second extension, the next following extension shall not be granted unless the Secretary of Labor had determined and certified to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) for the purpose of permitting the nonimmigrant to obtain such extension.

(D) The numerical limitation described in paragraph (1)(A) for a fiscal year shall be reduced by one for each alien granted an extension under subparagraph (C) during such year who has obtained 5 or more consecutive prior extensions.

(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph ⟦(H)(i)⟧ *(H)(i)(b) or (c)*, (L), or (V) of section 101(a)(15) or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 248 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

(i)(1) ⟦For purposes⟧ *Except as provided in paragraph (3), for purposes* of section 101(a)(15)(H)(i)(b) and paragraph (2), the term "specialty occupation" means an occupation that requires—

(A) * * *

*   *   *   *   *   *   *

(3) For purposes of section 101(a)(15)(H)(i)(b1), the term "specialty occupation" means an occupation that requires—

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

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(j)*(1)* Notwithstanding any other provision of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this ⟦subsection⟧ *paragraph* shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this ⟦subsection⟧ *paragraph*, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such Agreement.

(2) Notwithstanding any other provision of this Act except section 212(t)(1), and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A), and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 101(a)(15) if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien's entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

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CHAPTER 9—MISCELLANEOUS

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DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. (a) * * *

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(s) H–1B NONIMMIGRANT PETITIONER ACCOUNT.—

(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the "H–1B Nonimmigrant Petitioner Account". Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under [section 214(c)(9).] *paragraphs (9) and (11) of section 214(c).*

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