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TRADE AND TARIFF ACT OF 1998

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

REPORT

[To accompany 2400]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, having considered legislation to provide certain tariff preferences to the countries of sub-Saharan Africa and the Caribbean Basin, to renew the Generalized System of Preferences, to renew the President's authority to proclaim changes in tariffs resulting from the negotiation of reciprocal trade agreements and to renew congressional procedures for implementing provisions of such agreements in United States law, to reauthorize existing trade adjustment assistance programs, to introduce a mechanism for investigating foreign barriers to United States agricultural exports, to implement an international agreement imposing disciplines on shipbuilding subsidies, to normalize trade relations with Mongolia, and to make minor changes to the customs laws of the United States, reports favorably thereon and refers the bill to the full Senate with a recommendation that the bill do pass.

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I. BACKGROUND

The Finance Committee's work on the Trade and Tariff Act of 1998 takes place against the backdrop of dramatic events unfolding in the global economy. As the Committee's recent hearings have underscored, the Asian financial crisis in particular is dampening the prospects for economic growth at home and abroad.

The impact has been felt most dramatically in our agricultural sector. American farmers depend on export markets for forty percent of their family income. The decline in international demand, combined with other factors, has forced a sharp decline in commodity prices and farm income.

Other sectors of the economy have been affected as well. United States manufacturers face both a decline in their export markets and strong price competition at home as the dollar has continued to appreciate against foreign currencies. Service providers have faced a decline in export demand as well.

In the past, economic events such as these have frequently led to calls both at home and abroad for increased protection against foreign competition. As history has proved, those calls have led to disastrous consequences for both the United States and world economies.

In the Committee's view, what is needed, instead, is strong international leadership to prevent a rising tide of protectionism from washing away the benefits the international trading system has afforded both producers and consumers in the United States. American farmers, manufacturers and service providers can expect little in the way of progress in reclaiming and expanding markets for their goods and services unless the United States provides that leadership.

Recent events underscore the need for a strong, unequivocal statement of the United States' commitment to a free and open trading system that will provide a rising standard of living for both U.S. and foreign workers. The Trade and Tariff Act of 1998 makes that statement. Trade is a positive-sum game from which both the United States and its trading partners can benefit if the United States can move aggressively ahead with its trade agenda. The Trade and Tariff Act of 1998 helps establish that agenda and provides the President with the tools he needs to implement it.

II. SUMMARY OF BILL

The Trade and Tariff Act of 1998 is divided into seven titles, a number of which incorporate legislation previously reported favorably by the Committee. Title I establishes a new program of trade preferences for the countries of sub-Saharan Africa in order to encourage investment and trade in one of the poorest regions in the world. Title I also renews the existing Generalized System of Preferences program and affords additional trade benefits to the eligible beneficiary countries under the Caribbean Basin Economic Recovery Act.

Title II of the Trade and Tariff Act of 1998 would renew the President's authority to proclaim changes in United States tariff schedules resulting from the negotiation of reciprocal trade agreements. Title II would also renew congressional procedures for implementing any changes to United States law required by an international trade agreement achieving the objectives established by Congress.

Title III reauthorizes existing trade adjustment assistance programs without modification for a two-year period. Those programs include (1) trade adjustment assistance for workers displaced by import competition, (2) trade adjustment assistance for firms facing a significant adjustment due to increased import competition, and (3) trade adjustment assistance programs established in conjunction with the NAFTA. Those programs would expire on September 30, 1998, in the absence of reauthorization.

Title IV creates a new mechanism for highlighting and potentially investigating barriers to U.S. trade in agricultural products. Title IV is intended to expand access to foreign markets for United States agricultural products.

Title V incorporates legislation implementing the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry negotiated under the auspices of the Organization for Economic Cooperation and Development. With minor modifications, Title V reflects legislation reported favorably last year by both the Finance and Commerce Committees.

Title VI would extend normal trade relations to Mongolia on a permanent and unconditional basis. Title VI would also make various changes to the United States tariff laws, including suspending certain duties on wool fabric and on certain articles brought to the United States by athletes and trainers participating in the Olympics and other world sporting events, expanding a trade program for United States insular possessions, allowing the importation of gum arabic and extending current duty drawback rules to materials used in the construction or equipment of certain mobile offshore drilling units.

Title VII adds two further revenue provisions. One would expand the definition of vessels qualified for capital construction fund treatment. The other would modify the period allowed for carryback and carryover of the Foreign Tax Credit.

III. GENERAL DESCRIPTION OF BILL

A. Title I—Trade and Development

1. Subtitle A—Legislation Authorizing a New Trade Policy for Sub-Saharan Africa

Subtitle A of Title I of the bill authorizes a new trade policy for sub-Saharan Africa. This subtitle would create a Senate substitute for the trade-related provisions of the African Growth and Opportunity Act (H.R. 1432), which was passed by the House of Representatives on March 11, 1998.

A. BACKGROUND

The subtitle is based on the trade-related provisions of the African Growth and Opportunity Act (H.R. 1432), with certain modifications that are outlined below. The purpose of this legislation is to authorize a new trade and investment policy that is designed to encourage increased trade and economic cooperation between the United States and the sub-Saharan African ("SSA") countries. It is the expectation of the Finance Committee that the increased trade and investment resulting from this legislation will encourage those sub-Saharan African countries committed to political and economic reform to continue to pursue such reforms.

Currently, sub-Saharan Africa is a region that faces significant economic and political difficulties, as well as opportunities. The SSA countries are among the poorest and least developed in the world. According to World Bank data, the annual per capita GNP for the SSA countries averages only $490. The political climate in several of the SSA countries, however, has improved in recent

years, though there remain a number of SSA countries that suffer from significant instability. Moreover, over 30 countries, with assistance from the World Bank and the International Monetary Fund, have taken steps toward economic reform, including some liberalizing of exchange rates and prices, privatizing state-owned enterprises, instituting tighter disciplines over government expenditures, limiting subsidies and reducing barriers to trade and investment.

Currently, trade between the United States and the SSA countries is small. In 1997, United States merchandise exports to the SSA countries amounted to less than 1 percent of total U.S. merchandise exports ($6.2 billion), while imports from those countries totaled only 1.7 percent of U.S. merchandise imports ($16.4 billion). Primary U.S. exports are transportation equipment, machinery, electronic products, agricultural products and chemicals. Principal imports from sub-Saharan Africa are energy-related products and minerals and metals.

The United States' efforts to encourage trade with the SSA countries have had limited success. For example, under the Generalized System of Preferences ("GSP") program, developing countries are eligible to receive duty-free access to the U.S. market for certain specified products. Although most of the SSA countries are eligible for preferential tariff treatment under the GSP program, only 6.9 percent of imports under the program in 1997 were from the SSA countries. U.S. imports from sub-Saharan Africa under GSP totaled $1.1 billion in 1997, with imports from South Africa ($450.8 million in 1997) accounting for almost half of this amount. Significantly, most petroleum products—which constitute the largest category of merchandise exports from the SSA countries—are not eligible for duty-free treatment under the GSP program.

The Senate Finance Committee held a hearing on the U.S.-sub-Saharan Africa trading relationship generally, and H.R. 1432 specifically, on June 17, 1998. During this hearing, the Committee heard testimony from the chief sponsors of the legislation from the House and Senate, officials from the Administration and interested parties from the private sector. The Committee also heard testimony on the issue of trade with Africa on September 17, 1997.

The African Growth and Opportunity Act (H.R. 1432) was introduced in the House of Representatives on April 24, 1997, and was referred to the House Committees on International Relations, Ways and Means, and Banking and Financial Services. The Committees on International Relations and Ways and Means each reported the bill on March 2, 1998. The Banking and Financial Services Committee was discharged of the bill on March 2, 1998. The bill was passed by the House on March 11, 1998, by a vote of 233–186.

B. SUMMARY OF SUBTITLE

This subtitle has four primary components. First, this subtitle provides eligible SSA countries with enhanced benefits under the GSP program. Second, this subtitle provides those countries quota-free and duty-free access to the United States for certain textile and apparel products. Third, this subtitle directs the President to create a United States-Sub-Saharan African Trade and Economic Cooperation Forum. Fourth, this subtitle directs the President to

examine the feasibility of negotiating a free trade agreement with one or more of the SSA countries.

C. GENERAL DESCRIPTION OF SUBTITLE

What follows is a section-by-section description of the subtitle.

Section 1001. Short title

Section 1001 provides that this subtitle may be referred to as the "African Growth and Opportunity Act."

Section 1002. Findings

Section 1002 enumerates twelve findings with regard to this subtitle:

That it is in the mutual interest of the United States and the countries of sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa.

That the 48 countries of sub-Saharan Africa form a region richly endowed with both natural and human resources.

That sub-Saharan Africa represents a region of enormous economic potential and of enduring political significance to the United States.

That the region has experienced a rise in both economic development and political freedom as countries in sub-Saharan Africa have taken steps toward liberalizing their economies and encouraged broader participation in the political process.

That the countries of sub-Saharan Africa have made progress toward regional economic integration that can have positive benefits for the region.

That despite these gains, the per capita income in sub-Saharan Africa averages less than $500 annually.

That United States foreign direct investment in the region has fallen in recent years and the sub-Saharan African region receives only minor inflows of direct investment from around the world.

That trade between the United States and sub-Saharan Africa, apart from the import of oil, remains an insignificant part of total United States trade.

That trade and investment, as the American experience has shown, can represent powerful tools for economic development and for building a stable political environment in which political freedom can flourish.

That increased trade and investment flows have the greatest impact in an economic environment in which trading partners eliminate barriers to trade and capital flows and encourage the development of a vibrant private sector that offers individual African citizens the freedom to expand their economic opportunities and provide for their families.

That offering the countries of sub-Saharan Africa enhanced trade preferences will encourage both higher levels of trade and direct investment for the region as well as enhance commercial and political ties between the United States and sub-Saharan Africa.

That encouraging the reciprocal reduction of trade and investment barriers in Africa will enhance the benefits of trade

and investment for the region as well as enhance commercial and political ties between the United States and sub-Saharan Africa.

Section 1003. Statement of policy

Section 1003 states the support of Congress for:

Encouraging increased trade and investment between the United States and sub-Saharan Africa.

Reducing tariff and nontariff barriers and other obstacles to sub-Saharan African and United States trade.

Expanding United States assistance to sub-Saharan Africa's regional integration efforts.

Negotiating reciprocal and mutually beneficial trade agreements, including the possibility of establishing free trade areas that serve the interests of both the United States and the countries of sub-Saharan Africa.

Focusing on countries committed to accountable government, economic reform, and the eradication of poverty.

Strengthening and expanding the private sector in sub-Saharan Africa.

Supporting the development of civil societies and political freedom in sub-Saharan Africa.

Establishing a United States-Sub-Saharan African Economic Cooperation Forum.

Section 1004. Eligibility requirements for additional trade benefits under the generalized system of preferences

Section 1004 amends the Generalized System of Preferences (GSP) program, Title V of the Trade Act of 1974, by inserting a new section 506A. This new section authorizes the President to designate certain countries as beneficiary SSA countries eligible for certain enhanced benefits under the GSP program.

In order to be designated as a beneficiary SSA country, and therefore eligible for the benefits set forth in this section, a country must satisfy three sets of criteria. First, the President must find that the sub-Saharan African country has established, or is making continual progress toward establishing:

A market-based economy, where private property rights are protected and the principles of an open, rules-based trading system are observed.

A democratic society, where the rule of law, political freedom, participatory democracy, and the right to due process and a fair trial are observed.

An open trading system through the elimination of barriers to United States trade and investment and the resolution of bilateral trade and investment disputes.

Economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, and promote the establishment of private enterprise.

Second, the President must find that the SSA country does not engage in gross violations of internationally recognized human rights or provide support for international terrorism and cooperates in international efforts to eliminate human rights violations and ter-

rorist activities. Third, the SSA country must satisfy the eligibility criteria for the GSP program.

Once a country has satisfied the eligibility criteria, it can be designated by the President as a beneficiary sub-Saharan African country and receive the enhanced GSP benefits set forth in this section. The Committee intends that the eligibility criteria described insection 1004 apply only to the new benefits described in new section 506A and are not meant to limit the GSP benefits available to the SSA countries under current law.

The new section 506A would authorize the President to provide duty-free treatment for any item, other than textile or apparel products or textile luggage, that is designated as import sensitive under subsection 503(b)(1) of Title V. The general rules of origin governing duty-free entry under the GSP program will continue to apply, except that, in determining whether products are eligible for the enhanced benefits of the bill, up to 15 percent of the appraised value of the article at the time of importation may be derived from materials produced in the United States. In addition, under new section 506A, the value of materials produced in any beneficiary SSA country may be applied in determining whether the product meets the applicable rules of origin for purposes of determining the eligibility of an article to receive the duty-free treatment provided by this section. Section 1004 also amends subsection 503(c)(2)(D) to waive permanently the competitive need limits that would otherwise apply to beneficiary SSA countries.

The new section 506A established by section 1004 of the Act also requires the President to monitor, and report annually to Congress, on the progress the SSA countries have made in meeting the three categories of eligibility criteria set forth above. The Committee expects that in the annual report required in section 1008 of this subtitle, the President will provide an explanation of his assessment of the progress being made by each country listed in section 1009 toward meeting the stated eligibility requirements, citing specific examples where possible.

New section 506A would require the President to terminate the designation of a country as a beneficiary SSA country if that country is not making continual progress in meeting the eligibility requirements. Any such termination would be effective on January 1 of the year following the year in which the determination is made that the eligibility criteria are no longer met.

As provided in Subtitle B, the entire GSP program will remain in effect through June 30, 2008 for GSP beneficiary countries in sub-Saharan Africa.

Section 1005. Treatment of certain textiles and apparel

Section 1005 provides beneficiary sub-Saharan African countries (as designated under the new section 506A of the Trade Act of 1974 added by section 1004 above) with duty-free and quota-free access to the U.S. market for certain textiles and apparel products. In order to receive these benefits, a beneficiary sub-Saharan African country must (1) adopt an effective and efficient visa system to guard against unlawful transshipment of textile and apparel products and the use of counterfeit documents; and, (2) enact legislation or regulations that would permit the United States Customs Serv-

ice to investigate thoroughly allegations of transshipment through such country. Section 1005 directs the United States Customs Service to provide technical assistance to the beneficiary sub-Saharan African countries in complying with these two requirements.

The benefits under section 1005 are available only for the following textile and apparel products:

> Apparel articles assembled in beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States.
>
> Apparel articles cut and assembled in beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, and assembled with thread formed in the United States.
>
> Handloomed, handmade and folklore articles from beneficiary sub-Saharan African countries, that have been certified as such by the competent authority in the beneficiary sub-Saharan African country.

The Committee expects that only genuinely handcrafted articles, normally produced in limited quantities, will be designated as eligible; this provision is not intended to benefit large-scale, industrial production of textile or apparel articles. In addition, the Committee intends that textile luggage (i.e., luggage made of textile material identified in headings 4202.12 and 4202.92 of the Harmonized Tariff Schedule of the United States (HTS)) be treated as a textile product, and therefore it will not be eligible for duty-free or quota-free treatment under this legislation (except when such textile luggage has been certified as a handloomed, handmade or folklore article).

The Committee also intends that this new program of textile and apparel benefits will be administered in a manner consistent with the regulations that currently apply under the "Special Access Program" for textile and apparel articles from Caribbean and Andean Trade Preference Act countries, as described in 63 Fed. Reg. 16474–16476 (April 3, 1998). Thus, the requirement that products must be assembled from fabric formed in the United States applies to all textile components of the assembled products, including linings and pocketing, subject to the exceptions that currently apply under the "Special Access Program."

Section 1005 provides that if an exporter is found to have engaged in transshipment with respect to textile or apparel products from a beneficiary SSA country, then the President must deny all benefits under this section and under section 1004 of this subtitle to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter for a period of 2 years.

Section 1005 also includes a safeguard measure, authorizing the President to impose appropriate remedies, including restrictions on or the removal of quota-free and duty-free treatment, in the event that imports of textile and apparel articles from a beneficiary SSA country are being imported in such increased quantities as to cause serious damage, or actual threat of such damage, under the Agreement on Textiles and Clothing ("ATC'). The Committee intends that the injury standard be the same as set forth under the ATC, even though the remedies the President may impose under this

provision include withdrawing or restricting both the duty-free and quota-free treatment provided under this section. With respect to the imposition of quotas, the intent of the Committee is that the President exercise his authority under the safeguard provisions of this section only in a manner consistent with the ATC; thus, the Committee does not intend that this provision would authorize the President to impose quotas on WTO members once they are eliminated under the ATC in 2005.

The benefits provided by this section will be effective from January 1, 1999 through June 30, 2008.

The benefits available under section 1005 with regard to textiles and apparel products are not provided as a part of the GSP program. It is not the intent of the Committee that tariff relief or quota removal for textile and apparel products become or be treated as benefits provided under the GSP program.

Section 1006. United States-Sub-Saharan Africa Trade and Economic Cooperation Forum

Section 1006 directs the President to establish a United States-Sub-Saharan African Trade and Economic Cooperation Forum with interested SSA countries. The purpose of this Forum is to foster close economic ties between the United States and sub-Saharan Africa by encouraging meetings between private sector, governmental and nongovernmental leaders to discuss expanding trade and investment relations between the United States and sub-Saharan Africa. Section 1006 also directs the President to meet with the heads of the governments of interested SSA countries for the purpose of discussing expanding trade and investment relations between the United States and sub-Saharan Africa.

Section 1007. United States-Sub-Saharan African free trade area

Section 1007 directs the President to examine, and report back to the Senate Committee on Finance and the House Committee on Ways and Means regarding, the feasibility of negotiating a free trade agreement with interested sub-Saharan African countries. If the President finds that such an agreement is feasible, then the President must provide a detailed plan for such negotiation(s) that outlines the objectives, timing, any potential benefits to the United States and sub-Saharan Africa, and the likely economic impact of any such agreement.

Section 1008. Reporting requirement

Section 1008 directs the President to submit to Congress each year, for five years following enactment of this subtitle, a report on the implementation of this subtitle.

Section 1009. Sub-Saharan Africa defined

Section 1009 defines sub-Saharan Africa as the forty-eight countries listed in that section.

2. Subtitle B—Legislation Extending Duty-Free Treatment Under the Generalized System of Preferences

Subtitle B reauthorizes the Generalized System of Preferences program through June 30, 2008 for beneficiary developing coun-

tries in sub-Saharan Africa and through December 31, 2000 for all other beneficiary developing countries.

A. BACKGROUND

The Generalized System of Preferences (GSP), title V of the Trade Act of 1974, as amended, grants authority to the President to provide duty-free treatment to imports of eligible articles from designated beneficiary developing countries, subject to certain conditions and limitations. To qualify for GSP benefits, each beneficiary country is subject to various mandatory and discretionary eligibility criteria. Import sensitive products are ineligible for GSP. The President's authority to grant GSP benefits expired on June 30, 1998.

B. GENERAL DESCRIPTION OF SUBTITLE

Section 1101. Extension of duty-free treatment under Generalized System of Preferences

Section 1101 of this subtitle reauthorizes the GSP program through June 30, 2008 for beneficiary developing countries in sub-Saharan Africa and through December 31, 2000 with respect to all other beneficiary developing countries.

Section 1102. Effective date

Subsection 1102(a) of this subtitle provides that the new termination dates, as set forth in section 1101, apply to articles entered on or after October 1, 1998.

Subsection 1102(b) of this legislation provides for retroactive application for certain liquidations and reliquidations. Specifically, this subsection allows the Secretary of the Treasury to liquidate or reliquidate as free of duty any article that was entered after June 30, 1998, and before October 1, 1998, and that would have otherwise been eligible for duty-free treatment under the GSP program if the entry had been made on June 30, 1998. This subsection directs the Secretary to refund any duty paid with respect to such entries, although no refund shall be paid prior to October 1, 1998.

Subsection 1102(c) of this subtitle provides that requests for liquidation or reliquidation under subsection 1102(b) must be filed with the Customs Service within 180 days after the enactment of this Act. Such requests must contain sufficient information to enable the Customs Service to locate the entry or to reconstruct the entry if it cannot be located.

3. Subtitle C—Legislation Authorizing the United States-Caribbean Basin Trade Enhancement Act

Subtitle C authorizes the grant of additional trade preferences available under the United States-Caribbean Basin Trade Enhancement Act as described below.

A. BACKGROUND

Congress enacted the Caribbean Basin Economic Recovery Act ("CBERA") in 1983 to respond to an economic crisis in Central America and the Caribbean. The principal U.S. response to that

crisis under CBERA was a broad grant of unilateral tariff preferences to qualifying beneficiary countries.

In order to qualify, the beneficiary country had to request the opportunity to participate. The President then determined whether the country was eligible based on a variety of factors, including, among others, the country's commitment to afford the United States equitable and reasonable market access, the country's participation (at the time) in the General Agreement on Tariffs and Trade (GATT), its willingness to accept subsidy disciplines, the extent to which the country afforded adequate intellectual property protection, whether or not the country had taken steps to afford internationally recognized worker rights, and the extent to which the country's economic policies would contribute to the goals of the Caribbean Basin Initiative, or "CBI" as it is widely known.

The original grant of preferences was limited to a period of 12 years. It covered virtually all trade with the CBI countries with the exception of textiles and apparel, canned tuna, petroleum and petroleum products, and certain watches and watch parts, handbags, luggage, flat goods such as wallets, change purses and key and eyeglass cases, work gloves and leather wearing apparel.

The current CBI beneficiaries include Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and the British Virgin Islands.

In 1990, Congress passed the Caribbean Basin Economic Recovery Expansion Act of 1990, the so-called "CBI II." That Act made the unilateral grant of preferences permanent. It also expanded the tariff preferences. CBI II permitted the President to proclaim a tariff reduction of 20 percent (but not more than 2.5 percent ad valorem on any article) on tariffs applicable to a subset of the previously excluded products—handbags, luggage, flat goods, work gloves, and leather wearing apparel. CBI II also allowed for duty-free treatment on articles, other than textiles and petroleum-based products, if made from U.S. fabricated components.

In 1993, the United States, Canada, and Mexico signed the North American Free Trade Agreement (NAFTA). Among the commitments made by the United States to Mexico were the sharp reduction in duties and quantitative limits applicable to products ineligible for CBI treatment, including textiles and apparel. This subtitle is intended to afford CBI beneficiaries treatment akin to that afforded Mexican products in order to avoid undermining investment in the Caribbean Basin based on preferences previously available under the CBI.

Like the CBI II, enacted in 1990, this legislation would expand the existing CBI by providing for additional tariff preferences on a number of products not previously covered by the program. Those benefits, however, are conditioned on the eligible beneficiary countries' trade policies, their participation and cooperation in the Free Trade Area of the Americas (FTAA) or other comparable trade initiatives, as well as certain non-trade factors provided for in the legislation.

B. GENERAL DESCRIPTION OF SUBTITLE

What follows is a section-by-section description of the subtitle.

Section 1201. Short title

Section 1201 provides that, if enacted, the measure may be cited as the "United States-Caribbean Basin Trade Enhancement Act."

Section 1202. Findings and policy

The findings contained in section 1202 set out the underlying rationale for expansion of the CBI program. The over-arching purpose of the subtitle is to provide opportunities that will enhance the beneficiary countries' economic development and integration into the international trading system, while providing expanded export opportunities for U.S. goods as a result of the increased trade and economic growth that the enhanced CBI program is designed to foster. The findings underscore that point, as well as emphasize the United States' commitment to encouraging the development of strong democratic governments and revitalized economies throughout the region.

The policy provisions of section 1202 reflect the policy of the United States to encourage CBI beneficiaries to become a party to the FTAA or a comparable trade agreement at the earliest possible date. The provisions make the preferences afforded under this subtitle expressly contingent on a CBI beneficiary country's willingness to join the United States in those initiatives.

Section 1203. Definitions

Section 1203 provides certain definitions applicable to the provisions of the Subtitle, including definitions of "beneficiary country," "CBTEA," "NAFTA," "NAFTA country," "WTO," and "WTO member."

Section 1204. Temporary provisions to provide additional trade benefits to certain beneficiary countries

This section amends subsection 213(b) of the CBERA to provide a tariff preference to imports from the Caribbean Basin of products previously excluded from the CBI, including certain textile and apparel products, footwear, canned tuna, petroleum and derivatives, watches and watch parts. This legislation would establish a "transition period" of three years (from January 1, 1999 through December 31, 2001) during which additional tariff preferences could be made available on certain of those items.

Eligibility for the program is left in the discretion of the President, but the proposal would provide very specific guidance as to the criteria the President should apply in making that determination. The starting point under this subtitle is compliance with the eligibility criteria set out in the original CBERA. This subtitle would add certain trade-related criteria, such as the extent to which the beneficiary country fully implements the various Uruguay Round agreements, whether the beneficiary country affords adequate intellectual property protection and protection to U.S. investors, and the extent to which the country applies internationally accepted rules on government procurement and customs valuation.

This section also adds other criteria that reflect important U.S. initiatives. They include, among others, the extent to which the country has become a party to and implements the Inter-American Convention Against Corruption, is or becomes a party to a convention regarding the extradition of its nationals, satisfies the criteria for counter-narcotics certification under section 490 of the Foreign Assistance Act of 1961, and provides internationally recognized worker rights.

Section 1204 imposes two reporting requirements. The first obliges the President to report at the outset of the program and at the end of the three-year transition period on the performance of each beneficiary country in meeting the applicable criteria. Before submitting such report, the United States Trade Representative (USTR) must seek public comment. The second reporting requirement obliges the United States International Trade Commission to assess the impact of the various CBI programs on U.S. industries and consumers.

The preferences offered under this subtitle are divided between those made available for imports of certain textile and apparel products and those available for all other products covered by the legislation.

Textiles

With respect to textiles, this legislation adopts an approach consistent with that of the CBI II, one that will both provide expanded benefits to the CBI beneficiaries' apparel industry while affording new opportunities for U.S. textile, yarn, and thread producers. Section 1204 would extend immediate duty-free and quota-free treatment to the following products:

(1) Apparel articles assembled in an eligible CBI beneficiary country from U.S. fabrics wholly formed from U.S. yarns and cut in the United States that would enter the United States under HTS subheading 9802.00.80 (a provision that otherwise allows an importer to pay duty solely on the value-added abroad when U.S. components are shipped abroad for assembly and re-imported into the United States);

(2) Apparel articles entered under chapters 61 and 62 of the HTS that would have qualified for HTS 9802.00.80 treatment but for the fact that the articles were subjected to certain types of washing and finishing;

(3) Apparel articles cut and assembled in the eligible CBI country from U.S. fabric formed from U.S. yarn and sewn in such country with U.S. thread;

(4) Handloomed, handmade and folklore articles originating in the CBI beneficiary country;

(5) Textile luggage assembled in an eligible CBI beneficiary country from U.S. fabrics wholly formed from U.S. yarns and cut in the United States that would enter the United States under HTS subheading 9802.00.80; and

(6) Textile luggage cut and assembled in the eligible CBI beneficiary country from U.S. fabric formed from U.S. yarn and sewn in such country with U.S. thread.

With respect to handloomed, handmade, and folkloric items, section 1204 provides that the President, in consultation with the rel-

evant beneficiary country, will determine which, if any, particular textile and apparel articles are to be treated as handloomed, handmade or folklore goods eligible for trade preferences under this program. The Committee expects that only genuinely handcrafted articles, normally produced in limited quantities, will be designated as eligible; this provision is not intended to benefit large-scale, industrial production of textile or apparel articles.

As regards textile luggage, the Committee intends that the program cover items covered by two HTS categories. The program would cover luggage made of textile materials identified in headings 4202.12 and 4202.92 of the HTS.

The Committee intends that the new program of textile and apparel benefits will be administered in a manner consistent with the regulations that currently apply under the "Special Access Program" for textile and apparel articles from Caribbean and Andean Trade Preference Act countries, as described in 63 Fed. Reg. 16474-16476 (April 3, 1998). Thus, the requirement that products must be assembled from fabric formed in the United States applies to all textile components of the assembled products, including linings and pocketing, subject to the exceptions that currently apply under the "Special Access Program."

Section 1204 would allow for the snapback of the tariff preferences provided under this section in the event of surges in imports that could cause serious damage to the U.S. industry producing a like product in the United States. To ensure that the preferences made available under this subtitle do not lead to the transshipment of textile and apparel products from other countries where the goods would be subject to U.S. quotas, this section includes two provisions penalizing such actions.

First, it would penalize exporters found, on the basis of sufficient evidence, to have engaged in transshipment—all benefits under the CBERA program would be denied for a period of two years. Second, any country that was found, on the basis of sufficient evidence, to have failed to take action to prevent transshipment after a specific request for assistance in that regard from the President would have its exports reduced by three times the quantities found to have been transshipped. The Committee intends the "sufficient evidence" standard used here to be the same as that applied under Article 5:4 of the Agreement on Textiles and Clothing administered by the World Trade Organization (WTO).

Other products

On all other products covered by this subtitle (footwear, canned tuna, petroleum and derivatives, and watches and watch parts, and certain leather goods), the program would provide an immediate reduction in tariffs equal to 50 percent of the preference Mexican products enjoy under NAFTA relative to imports of the same articles from CBI beneficiaries. In other words, the applicable duty paid by importers on such goods would be equal to the duty applicable to the same good if entered from Mexico, plus one-half of the difference between the duty rate afforded Mexico on that product and the duty rate that would otherwise apply to the product if imported from the CBI beneficiary country but for the enactment of this subtitle.

This legislation allows for additional reductions over the duration of the program if the President determines that eligible CBI beneficiary countries are making progress toward fulfilling the criteria set out in the eligibility criteria set out in this subtitle.

In order for their products to qualify for the preferences afforded under this subtitle, whether applied to textiles and apparel or other products, the beneficiary country must comply with customs procedures equivalent to those required under the NAFTA.

Section 1205. Adequate and effective protection for intellectual property rights

Section 1205 of this subtitle clarifies that, for purposes of assessing whether a CBI beneficiary is offering adequate intellectual property protection, compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights is not determinative.

B. Title II—Legislation To Extend Tariff Proclamation Authority and Fast Track Procedures for Congressional Consideration of Trade Agreements

Title II extends tariff proclamation authority and fast track procedures for congressional consideration of trade agreements. Title II incorporates the provisions of S. 1216, the Reciprocal Trade Agreements Act of 1997 as reported by the Senate Committee on Finance on October 8, 1997 with a few minor modifications.

1. Background

Article I, section 8, clause 2 of the Constitution delegates the power to regulate foreign commerce to Congress. Congress has historically exercised that power through legislation regulating imports of goods, services, and investment into the United States.

Beginning with the Reciprocal Trade Agreements Act of 1934, however, Congress introduced a new means of addressing the changing needs of American trade policy. Congress delegated authority to the President to proclaim changes in U.S. tariffs, within prescribed limits, based on the results of mutually beneficial trade agreements concluded with our foreign trading partners. Congress set the overall objectives of the negotiation, but offered the President and our trading partners the assurance that, if the agreement reached was consistent with the objectives and conditions set by Congress, the agreement would be implemented in U.S. law.

With the progress of the Trade Agreements Program initiated by Secretary of State Cordell Hull (a former member of the Finance Committee) under the authority of the 1934 Act and of later rounds of multilateral negotiations within the framework of the General Agreement on Tariffs and Trade (GATT), U.S. negotiators achieved significant reductions in tariffs abroad. Those agreements called for significant reductions in U.S. tariffs as well. As tariff levels fell, particularly after the Kennedy Round of tariff negotiations concluded in 1967, it became clear that future rounds of trade talks would focus on the panoply of non-tariff measures that our trading partners used to bar or inhibit U.S. exports from reaching their markets.

That, in turn, posed a problem in terms of the implementation of any agreement that called for a reciprocal reduction in U.S. non-tariff measures limiting imports of foreign goods, services, and investment. In this Committee's view then and now, Congress could not, consistent with its constitutional responsibilities, delegate authority to the President to revise U.S. domestic law by proclamation in the manner it had delegated the authority to proclaim changes in tariffs. At the same time, Congress recognized that the President, as a practical matter, might be unable to conclude future trade agreements unless he could assure our trading partners that the agreement would not be amended by Congress after the fact.

In order to overcome that problem, Congress introduced what have become known as the "fast track" procedures for implementing trade agreements in the Trade Act of 1974. The procedures, referred to in the Committee's bill as the "trade agreement approval procedures," were designed to preserve Congress' constitutional role in the regulation of foreign commerce, while offering the President and our trading partners the assurance that a trade agreement requiring changes in U.S. law would receive an up-or-down vote within a time certain when brought before Congress.

Consistent with the approach of the Reciprocal Trade Agreements Act of 1934, Congress set the President's negotiating objectives. The President was then obliged to notify Congress prior to entry into any trade agreement, consult on the nature and scope of the accord, and submit the President's findings as to how the pact met the objectives set by Congress, together with legislation needed to implement the agreement in U.S. law.

Congress has preserved that basic structure each time it has renewed the trade agreement approval procedures. The procedures were renewed once for eight years by the Trade Agreements Act of 1979, and a second time for five years in the Omnibus Trade and Competitiveness Act of 1988. The authority granted by the 1988 Act was extended in 1993 for an additional six months in order to complete the Uruguay Round of multilateral trade negotiations. It has not been renewed since.

The fast track authority has been used on five occasions. Congress used the fast track procedures to implement the Tokyo and Uruguay Rounds of GATT multilateral trade negotiations, in 1979 and 1994 respectively. Congress also relied on the fast track to implement free trade accords with Israel in 1985 and Canada in 1988, and to implement the North American Free Trade Agreement (NAFTA) in 1993.

The Reciprocal Trade Agreements Act of 1998 would retain the same basic structure and authority for the President contained in prior extensions of the trade agreement approval procedures. It would, however, make several important changes designed to reemphasize the original purpose of the authority—the reduction of trade barriers and the expansion of market access for U.S. exports—as well as strengthen Congress' role in and oversight of the process.

The motivation and intent behind those changes is to restore the trade agreement approval procedures to their intended role. Those procedures were not designed and were never intended to provide

a means to revise the fundamental objectives and contours of U.S. domestic law. Rather, the procedures are designed to implement changes in U.S. law necessary to conform to our obligations under a trade agreement.

Prior law allowed provisions in implementing legislation that were "necessary or appropriate" to the approval of the agreement or its implementation in U.S. law. Title II of the Committee's bill would clarify that the trade agreement approval procedures are available only to those measures necessary to approve and implement a trade agreement and those traded-related measures that are otherwise related to the implementation, enforcement, or adjustment to the effects of such agreement. Those measures would include such items as amendments to the unfair trade laws needed to ensure that U.S. goods and services do not face unfair competition from imports and implementation of the Trade Adjustment Assistance programs reauthorized elsewhere in this legislation.

The Committee is confident that the framework established by the Reciprocal Trade Agreements Act of 1998 lays the proper foundation for the limited purpose the trade agreement approval procedures were originally designed to serve. The Act sets out specific negotiating objectives that the Committee expects the President to pursue with our trading partners. The Act strengthens existing notice and consultation requirements by mandating comprehensive consultations at the outset and at every succeeding stage of the negotiations. The Act provides a process by which Congress may disapprove of new negotiations that might otherwise be eligible for implementation under the fast track procedures. Finally, the Act limits the application of the fast track procedures to agreements that achieve one or more of the negotiating objectives set by Congress and those provisions that are directly related to trade and otherwise related to the implementation, enforcement and adjustment to the effects of any such accord.

The Reciprocal Trade Agreements Act of 1998 grants the President the authority he needs to offer the international leadership only America can provide on trade. At the same time, it assures that the trade agreement approval procedures will be used as originally intended: as a tool to assist in the reduction of barriers to U.S. trade.

2. Summary of Title

The legislation is divided into ten sections. Apart from section 2001, which provides a short title for this title, the provisions fall into three categories.

Sections 2002 and 2003 address the nature, purpose, and scope of the authority granted in this bill. Section 2002 sets out the purposes for which the implementing procedures in section 2003 are provided, specifies the principal trade negotiating objectives on which Congress expects the President to focus in future trade negotiations for which such procedures may be used, and identifies complementary international economic objectives that would reinforce the trade negotiations process.

Section 2003 includes two separate implementing procedures, one allowing the President to proclaim changes in U.S. tariffs resulting from trade agreements reached with our foreign trading partners,

and another establishing a set of trade agreement approval procedures for congressional review of implementing legislation needed to make changes in U.S. law other than tariff changes (i.e., the fast track). Section 2003 also defines what types of measures would qualify for expedited congressional review.

Sections 2004 and 2005 contain the procedural aspects of the measure, including those provisions intended to strengthen Congress' role in and oversight of the trade negotiations process. Section 2004 sets out the notice and consultation requirements, which require the President to notify the Congress of the initiation of negotiations and the potential entry into an agreement and obligate the President to consult at every stage of the process. Section 2005 sets out the implementing procedures themselves, including provisions allowing for congressional disapproval of negotiations under certain circumstances.

Sections 2006 through 2008 set out various provisions that are integral to the operation of the legislation or reinforce the principal purpose of this title. Those include the waiver of notice requirements for negotiations already under way, as well as definitions and conforming amendments.

3. General Description of Title

What follows is a section-by-section description of the title.

Section 2001. Short title

Section 2001 provides that, if enacted, the measure would be cited as the "Reciprocal Trade Agreements Act of 1998."

Section 2002. Trade negotiating objectives of the United States

Section 2002, which sets out the trade negotiating objectives of the United States, is divided into three parts—a statement of purposes, the trade negotiating objectives themselves, and a complementary set of economic policy objectives designed to reinforce the trade agreements process.

(i) Statement of purposes

Subsection 2002(a), the Statement of Purposes, provides the underlying rationale for which Congress grants access to the trade agreement approval procedures—expanding U.S. access to foreign markets, reducing barriers to trade, creating more effective international trade rules, and promoting economic growth, higher living standards and full employment in the United States, as well as economic growth and development among our trading partners that will lead to expanding markets for U.S. goods, services, and investments.

(ii) Principal trade negotiating objectives

Subsection 2002(b), the Principal Trade Negotiating Objectives, identifies the specific sectors and practices on which Congress expects U.S. negotiators to focus in their use of the authority provided to the President. The provision links access to the trade agreement approval procedures to agreements fulfilling one or more of the enumerated objectives.

While the Principal Trade Negotiating Objectives are largely self-explanatory, several deserve some additional comment. They include—

Trade in Goods: The provision clarifies that the principal objective of the United States with respect to trade in goods is reducing barriers to U.S. exports. The provision cites three specific examples: (1) the elimination of disparities between higher foreign and lower U.S. tariffs left over from previous rounds of multilateral tariff negotiations, (2) the elimination of those tariff and nontariff measures identified in the United States Trade Representative's (USTR) annual trade barriers study produced under section 181 of the Trade Act of 1974, and (3) the elimination of tariffs on those items specifically identified in section 111(b) of the Uruguay Round Agreements Act and the related Statement of Administrative Action as targets for the reciprocal elimination of tariffs on a tariff category-by-tariff category basis.

By specifying those examples, the Committee intends to provide particular focus to the President's efforts. They are not meant as a limit on the products or sectors covered by the negotiating objective. Rather, the Committee expects that the President will use the authority broadly to address all barriers that inhibit U.S. merchandise exports, including the barriers to be addressed in extended negotiations under World Trade Organization (WTO) auspices called for by section 135 of the Uruguay Round Agreements Act and the related Statement of Administrative Action on trade in civil aircraft.

Trade in Services: The principal negotiating objective on trade in services reinforces the Congress' direction to the President contained in prior law to expand access to foreign markets for U.S. service providers. The provision extends guidance for negotiators from prior law regarding U.S. domestic policy objectives in various areas, including health, safety, national security, environmental protection, consumer protection, and employment, but makes clear that the guidance should not be construed as authority to modify U.S. law related to those domestic policy objectives.

The Committee recognizes that the Uruguay Round represents a significant step toward achieving the goals set out both here and in prior law. The Committee retained the objective in order to underscore the need to expand the coverage of and participation in agreements reached in the Uruguay Round, to complete the negotiations called for in those agreements, and to encourage continuing bilateral efforts to eliminate barriers to U.S. service providers. With respect to future services agreements under the WTO, the Committee reemphasizes its expectation that the President shall agree solely to those arrangements benefiting U.S. interests on a mutual and reciprocal basis.

Investment: The principal negotiating objective with respect to foreign investment is the reduction of barriers to U.S. investment and the establishment of effective means for the equitable resolution of investment disputes. The guidance from prior law with respect to domestic policy objectives is extended here as well, along with the proviso noted above that the guidance should not be construed as authority to modify U.S. law.

Intellectual Property: The Committee intends to ensure that intellectual property protection, given its importance to the future of the U.S. economy and the ability of American firms to compete globally, remains a trade policy priority. As a consequence, the principal negotiating objective of the United States with respect to intellectual property protection continues to focus on the enactment and enforcement of adequate intellectual property protection abroad.

The surest route to that goal is the full implementation of the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The full benefit of the TRIPS agreement has been delayed by the lengthy transition periods allowed for under that accord. The Committee expects that the President will use both the WTO and trade negotiations in other fora to accelerate the full implementation of those rules.

The Committee views Chapter 17 of the NAFTA as the baseline for future negotiations on intellectual property protection. The Committee expects future agreements, whether concluded in the WTO or in other contexts, to contain intellectual property protection at least as strong as that of NAFTA.

Along with the rights themselves, holders of intellectual property rights need access to effective enforcement mechanisms to ensure that other private parties do not violate the rights that accrue under domestic law. The provisions of the bill with respect to enforcement mechanisms are not intended to prejudge the nature of those mechanisms or the sanctions, whether civil or criminal, that might apply as a result of an infringement. The objective is to ensure that the means are available, however designed, to ensure that U.S. holders of intellectual property rights can enforce those rights against infringing parties.

The objective reflected in the Act is designed to ensure the fullest possible protection for U.S. holders of intellectual property rights as those rights relate to international trade in goods and services and to international investment. Nothing in the Act should be construed to imply endorsement of agreements or conventions arising in contexts other than international trade which may serve to limit such rights through compulsory licensing or other methods.

Agriculture: Despite the accomplishments of the Uruguay Round Agreement on Agriculture, the agricultural sector remains blighted by the trade distorting policies of foreign governments. The overarching goal of U.S. negotiators should continue to be achieving more open and fair conditions of trade by reducing barriers to trade in agricultural products. In the Committee's view, that means such actions as eliminating trade distorting practices of state trading enterprises (particularly those that limit price transparency) and addressing a variety of other market distorting practices that unfairly decrease U.S. market access opportunities.

The Committee also expects that the President will address the proliferation of regulatory and commercial practices affecting new technologies. In practical terms, that means eliminating discriminatory standards or labeling requirements that unfairly bar access of U.S. farm products to particular markets.

While the primary objective should be expanding the scope of international disciplines over trade distorting practices in agricul-

tural markets, the Committee expects that the President will focus on improving existing arrangements as well. That means ensuring the enforcement of the rules that do exist and addressing particular issues, such as the lack of adequate safeguards under existing rules for domestic producers of seasonal and perishable agricultural products due to the nature of their product.

Unfair Trade Practices: The principal objective of the United States with respect to unfair trade practices is intentionally outward-looking. The Committee intends the focus of U.S. negotiators to be the elimination of the unfair trade practices abroad, not changes in or weakening of U.S. law at home. The goal should be to enhance existing international disciplines against unfair trade practices such as dumping and trade-distorting subsidies and ensuring the aggressive enforcement of those disciplines through the WTO agreements or any other trade agreement the President may conclude under the authority granted by this legislation.

Over the nearly six decades in which the Trade Agreements Program has been in place, the United States has seen a dramatic expansion of trade and a larger than ever percentage of the U.S. economy is affected by imports and exports. The core purpose of the unfair trade laws is to ensure that, in the process of liberalizing trade between the United States and its trading partners, the United States retains the ability to deter unfair import competition in its home market. As a consequence, the Committee does not intend that the authority granted in this Act be used to weaken the ability of U.S. unfair trade laws to deter such practices. The Committee expects the President to consult closely on the issue of the review of administrative determinations under the unfair trade laws in future trade agreements.

Improvement of the WTO and Multilateral Trade Agreements: In the Committee's view, the work within the WTO is far from complete despite the progress made in the Uruguay Round. Expanding the coverage of and participation in the WTO agreements is of paramount importance. The Committee expects further attention to compliance with existing agreements in order to ensure that the United States receives the full benefit of the underlying bargain it struck in supporting the creation of the WTO and in negotiating the various WTO agreements.

The Committee wants to ensure that U.S. negotiators adopt a similar approach to any other existing multilateral accords or any they may negotiate in the future. It is just as important to seek constant improvement in the existing framework of our trading arrangements as it is to negotiate new ones. Support for future trade-liberalizing agreements depends on adequately addressing problems with the function of existing arrangements.

Dispute Settlement: The basic objective of the United States in the area of dispute settlement remains the same: ensuring the effectiveness of trade dispute settlement procedures for the enforcement of U.S. rights, particularly within the WTO. Absent the effective enforcement of U.S. rights, international trade agreements are meaningless. The Committee encourages the President to consult closely on the means for enforcing U.S. trade agreements, whether in regard to changes in existing law or the resources dedicated to enforcement and compliance.

Transparency: The Committee recognizes that, absent access to foreign trade laws, regulations, and administrative proceedings, U.S. exporters, service providers, or investors have no means of ensuring that they are receiving the market access that the letter of our trade agreements provide. Similarly, absent an understanding of the processes of international institutions like the WTO, it is difficult for the public to see how U.S. interests are being protected (*e.g.*, whether the United States has received a fair hearing on its trade complaints and the benefit of its bargain in the implementation of any trade agreement). Accordingly, the Committee expects the President to ensure that trade laws, regulations, and processes among our trading partners, and dispute settlement processes within international institutions like the WTO, provide for appropriate public access.

Regulatory Competition: Successive rounds of multilateral trade negotiations and bilateral accords with Israel, Canada, and Mexico have gradually reduced or eliminated tariffs and other border measures used by governments to deter competition and international trade. That raises the risk (already evident in certain sectors such as agriculture) that governments will increasingly rely on government regulation as a means of discriminating against U.S. goods, services, and investment.

Such practices can take the form of direct limits on commerce, such as limits on distribution and retail sales, or the toleration of anticompetitive practices which otherwise hinder the sale of U.S. exports in particular markets. Such practices can also involve less direct means by foreign governments to afford a commercial advantage to their domestic producers, service providers, or investors, such as the use of health, safety, labor and environmental standards to discriminate in favor of domestically produced goods or lowering of or derogating from such standards in order to attract investment or inhibit U.S. exports.

Like the Act's treatment of unfair trade practices discussed above, the negotiating objective in this context is consciously outward-looking. The Committee intends that the provisions be used to address foreign government practices that discriminate against U.S. goods, services, and investment abroad or lower or derogate from existing health, safety, labor, environmental or other regulatory standards to attract investment or inhibit exports.

With respect to foreign government practices designed to attract investment or inhibit U.S. exports through the lowering of or derogating from such standards, the Committee emphasizes that the negotiating objective should not be construed to permit the inclusion of any provision in an implementing bill submitted under the trade agreement approval procedures set out in subsection 2003(b) of the Act, or in any agreement that would be the subject of an implementing bill submitted under those procedures, that would restrict the autonomy of the United States in those areas. Such provision should not be construed to call for negotiation of agreements providing for international enforcement of or changes to U.S. health, safety, labor or environmental standards. Nor would that provision authorize the imposition of any limit on the sovereign right of individual U.S. states to establish their own levels of

health, safety, labor, environmental, land use, tax, or other regulatory standards as they deem appropriate.

(iii) International economic policy objectives designed to reinforce the trade agreements process

Recent events have underscored the fact that trade negotiations and trade agreements do not operate in a vacuum. Subsection 2002(c) establishes international economic policy objectives that would reinforce the trade negotiations process. Those objectives would, for example, include: (1) work within international monetary institutions to encourage currency stability and coordination between trade and monetary institutions, (2) efforts in international contexts other than the WTO TRIPS agreement to strengthen standards for protection of intellectual property rights, (3) the promotion of respect for workers' rights, such as use of the ILO to monitor its members' adherence to certain accepted labor standards (e.g., the prohibition on exploitative child labor), and (4) expanding trade to ensure the optimal use of the world's resources, while seeking to protect and preserve the environment and to enhance the international means for doing so. The provision makes clear, however, that subsection 2002(c) does not authorize the use of the trade agreement approval procedures (i.e., the fast track) to modify U.S. law.

As the Committee has in prior law, the Act highlights the link between international trade and monetary policies. Recent events have underscored the need to promote policies among our trading partners that encourage stability in international currency markets. The Committee recognizes that significant shifts in exchange rates result from domestic economic policies, not trade agreements negotiated under authority of the sort granted in this Act. Nonetheless, such shifts can have a dramatic impact on the trade opportunities available to U.S. producers, service providers, and investors that trade agreements are otherwise designed to provide. The purpose of the provisions on currency stability reported by the Committee is simply to encourage U.S. efforts bilaterally and multilaterally through the appropriate international monetary institutions to help protect against the adverse consequences of excessive currency movements. It is the Committee's expectation that the President will consult on an ongoing basis regarding such matters as they relate to trade.

The Committee also wants to emphasize its recognition of the fact that, in the context of intellectual property protection, the WTO TRIPS agreement is not the only international forum in which the United States should pursue its goal of providing adequate and effective protection for U.S. holders of intellectual property rights. The Committee wants to encourage progress in other contexts, such as the World Intellectual Property Organization, the Paris, Rome, and Berne Conventions, and the Treaty on Intellectual Property in Respect of Integrated Circuits, that would complement the efforts of the United States within the WTO, the TRIPS agreement, and the intellectual property provisions of other international trade agreements.

As held true for the specific negotiating objective on intellectual property rights contained in subsection 2002(b) discussed above,

the goal should be to afford the broadest protection possible for U.S. holders of intellectual property rights. Accordingly, nothing in the broader economic policy objective of subsection 2002(c) on intellectual property should be construed to imply endorsement of any accord reached in other contexts that would limit such rights by compulsory licensing requirements or other means.

The provisions on worker rights and the environment are intended to encourage the President, outside of the context of trade agreements subject to fast track approval, to develop initiatives that would complement the agenda that the Committee's bill would establish for future trade negotiations. The examples cited with respect to worker rights are not intended to be exhaustive; rather, they are intended to identify two means by which the President might pursue complementary policies in the context of worker rights. The provision on the environment acknowledges the role that appropriate agreements between governments on the environment can play in protecting against environmental damage or encouraging conservation, such as agreements on international trade in endangered species, while at the same time ensuring that due weight is given to the valuable role trade can play in conservation efforts by ensuring the optimal use of the world's resources.

Section 2003. Trade agreement negotiating authority

Section 2003 contains two different procedures for implementing trade agreements—one for implementing the results of tariff negotiations and one for implementing the results of trade agreements that require other changes in U.S. law.

The first of those two, commonly referred to as "tariff proclamation authority," permits the President to "proclaim" the results of tariff negotiations directly into U.S. law without further review by Congress. The second set of procedures, designed for changes in U.S. law not covered by tariff proclamation authority, represents what are referred to in the Act as the "trade agreement approval procedures," but are commonly referred to as the "fast track." Those procedures apply to all changes in U.S. law required to implement the agreement other than the tariff modifications proclaimed by the President.

(i) Agreements regarding tariff barriers

Tariff negotiating authority contained in subsection 2003(a) tracks prior grants of negotiating authority contained in every extension of tariff negotiating authority since the Reciprocal Trade Agreements Act of 1934. It authorizes the President to modify U.S. duties resulting from any trade agreement reached with our foreign trading partners before October 1, 2001. The provision would allow for a single extension until October 1, 2005 under the procedures set out in subsection 2003(c).

Subsection 2003(a) imposes various limits on the President's tariff proclamation authority. It limits the maximum amount by which the President can cut any individual tariff (for U.S. tariffs over 5 percent, the President can cut the tariff by no more than half) and the aggregate reduction that can go into effect in any given year. Tariff cuts may be "staged" or phased-in over a maximum ten-year period. The provision includes rules on rounding to ensure the ad-

ministrability of the staged tariff cuts provided for under subsection 2003(a).

Subsection 2003(a) also provides a new grant of tariff proclamation authority that would, notwithstanding the limitations noted above, authorize the President to eliminate or harmonize all tariffs on certain articles for which members of the affected U.S. industry have requested so-called "zero-for-zero" negotiations or tariff harmonization. Under subsection 2003(a), such negotiations must result in the reciprocal elimination or harmonization of duties within the same tariff categories.

The new tariff authority would be subject to the notice and consultation requirements applicable to agreements that would normally be subject to consideration under the separate trade agreement approval procedures of subsection 2003(b) (i.e., the fast track). In particular, the President could use the authority to proclaim changes only in those tariff categories for which the President had provided notice to Congress before initiating the negotiations or those that are authorized by section 2006 of this title.

Any tariff agreement negotiated under paragraph (6) of subsection 2003(a) would also be subject to the consultation and layover requirements set out in section 115 of the Uruguay Round Agreements Act, which ensure additional congressional and private sector input and review by the United States International Trade Commission (ITC) before the changes go into effect. The authority is, in addition, circumscribed by the requirements that all such negotiations take place in the context of the WTO or as an interim step toward a free trade agreement.

The Committee underscores its understanding that the new authority granted in paragraph (6) of subsection 2003(a) will only be used to the extent requested by industry. The President shall take into account the ongoing competitive conditions facing particular domestic products, the extent to which they have faced or continue to face foreign unfair or trade distorting practices, and the extent to which sectors producing such products are currently adjusting to changes in competitive conditions resulting from prior tariff or non-tariff agreements (e.g., agricultural products, particularly perishables, citrus fruit, and fruit juices).

(ii) Agreements regarding tariff and non-tariff barriers

The Act provides a single track for implementing any changes in U.S. law (other than those subject to the President's tariff proclamation authority) required by a trade agreement negotiated by the President pursuant to the conditions set out in the Committee's bill, and then applies a common set of implementing procedures to all such agreements. The Act provides for an initial grant of authority through October 1, 2001, with the possibility of an extension of the procedures until October 1, 2005, as provided for in subsection 2003(c).

The Act imposes several conditions on access to the trade agreement approval procedures. First, consistent with every grant of trade negotiating authority since 1974, the agreement must be one that reduces foreign trade barriers. Agreements that do not fulfill that basic condition, such as arrangements in other areas that might refer to trade incidentally as an enforcement mechanism,

would not qualify under this provision because their only potential impact would be trade restrictive.

Second, access to the fast track is tied directly to fulfillment of the principal trade negotiating objectives set out in subsection 2002(b). An agreement, and its implementing legislation, would qualify for fast track only when it made progress toward fulfilling one or more of the principal negotiating objectives set out in that subsection.

Third, before an agreement and its implementing legislation would qualify for the trade agreement approval procedures, the President would have to have satisfied the notice and consultation provision of section 2004 of the Act. Thus, the President would have had to have provided notice and consulted with Congress and the appropriate industry sector advisory groups prior to initiating the talks as to their scope, and have consulted with Congress at every stage of the negotiations (including immediately prior to initialing any accord) in order to gain access to the trade agreement approval procedures.

Fourth, subsection 2003(a) would limit access to the trade agreement approval procedures solely to those provisions of the implementing legislation that are (1) required to approve an agreement that achieves one or more of the principal negotiating objectives and any related statement of administrative action; (2) necessary to implement such agreement; (3) otherwise related to the implementation, enforcement, or adjustment to the effects of such trade agreement and are directly related to trade; or (4) needed to comply with the Balanced Budget and Emergency Deficit Control Act of 1985.

In that regard, the Committee intends that the language allow solely for those trade-related items that have traditionally been a part of the implementation, enforcement or adjustment to new competitive conditions created by trade agreements. Those include, for example, trade adjustment assistance, provisions of the U.S. unfair trade laws (including the antidumping and countervailing duty laws and the provisions of section 337 of the Tariff Act of 1930), and congressional guidance on future negotiations. The language would also cover those items necessary to define or clarify the relationship between the agreement and U.S. law, such as provisions defining the relationship between federal and state law, preclusion of private rights of action based on the agreement itself, judicial procedures, or the establishment of administrative, consulting, or reporting mechanisms to carry out U.S. obligations under the agreement.

(iii) Extension procedures

Subsection 2003(c) of the Act provides a process for extending both the tariff proclamation authority of subsection 2003(a) and the trade agreement approval procedures of subsection 2003(b) that is consistent with prior law. The President must request the extension, provide his reasons for that request, along with an explanation of the trade agreements for which he expects to need fast track authority, and a description of the progress he has made to date toward achieving the principal negotiating objectives set out in subsection 2002(b). The President must also notify the Advisory

Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974, which then must file its own report with Congress.

The authority would be extended unless either House of Congress approves a "resolution of disapproval." Any member of Congress could introduce such a resolution in his or her respective House of Congress. Such resolutions would be referred, in the Senate, to the Committee on Finance, and in the House, jointly to the Committees on Rules and Ways and Means. Floor action on such resolutions would be out of order unless the resolution had been reported by the aforementioned committees.

Section 2004. Notice and consultations

Section 2004 revises and strengthens the notice and consultation requirements that had been included in the 1988 Act. The Committee acknowledges that the Executive Branch, over the course of the negotiations that were covered by the previous authority, frequently briefed the Committee on the status of trade negotiations. Although the Committee continues to believe that its Members and staff should be briefed frequently as trade negotiations progress, it is the Committee's view that regular briefings alone are not sufficient to ensure the type of consultation that will guarantee Congress a meaningful role in the trade agreements process.

Accordingly, in addition to the notice and consultation provisions that had been included in the 1988 Act, section 2004 adds a number of new requirements to help ensure close coordination and consultation at every stage of the negotiations. The 1988 Act required the President to provide written notice to this Committee and the House Ways and Means Committee of bilateral trade agreement negotiations at least 60 days before providing the required 90-day notice to the House of Representatives and the Senate of his intention to enter into a resulting agreement, and to consult with the two committees regarding such negotiations. Subsection 2004(a) requires the President to provide written notice to the Congress as a whole of his intention to begin multilateral as well as bilateral trade negotiations, at least 90 days before so doing. The notice must specify the date the President intends to begin such negotiations, the specific objectives for the negotiations, and whether the President intends to negotiate a new agreement or modify an existing agreement. Failure to provide such notice may trigger the introduction and consideration of a "procedural disapproval resolution" under the provisions of subsection 2005(b) of this bill, which, if approved, would deny the use of the trade agreement approval procedures (i.e., the fast track) for legislation implementing such an agreement.

Subsection 2004(a) also requires the President to consult with the Senate Finance and House Ways and Means Committees, as well with other committees the President deems appropriate, before and promptly after providing notice of his intention to begin negotiations. The Committee believes that the broadest possible consultation is desirable and that other committees that have an interest in the subject matter of a negotiation are entitled to be heard. As a consequence, the Committee's bill also requires the President to consult with any other committees that request such consulta-

tions in writing. The bill includes as well the requirement that the President must consult with appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 before beginning negotiations. In the view of the Committee, a mandate for broad consultations will help ensure that all interested parties are kept fully apprised of proposed negotiations.

Under subsection 2004(b), before entering into a trade agreement, the President is required to consult with the Senate Finance and House Ways and Means Committees, as well as with other committees that have jurisdiction over legislation involving subject matters that would be affected by the trade agreement under negotiation. In addition to the requirements stemming from the 1988 Act—that the consultations must include discussions as to the nature of the agreement and a detailed assessment of how and to what extent the agreement meets the purposes, policies and objectives set forth in section 2002 of this bill—the consultations must include a discussion of all matters related to the implementation of the agreement. These include an assessment as to whether the agreement includes subject matters that will require implementing legislation that does not qualify for the fast track procedures authorized by this bill.

To provide an adequate understanding of the context in which the negotiations will take place, the Committee expects that, with respect to free trade agreement negotiations, the consultations required in section 2004 will include an overview of the macroeconomic situations of the countries with which the United States is proposing to negotiate and any implications for relevant exchange rates. The Committee expects the President to keep it apprised of developments in this area as negotiations progress.

In addition, because the Committee is aware that a number of separate agreements on specific topics were concluded in conjunction with the implementing legislation for the three agreements most recently considered under the fast track procedures—the U.S.-Canada Free Trade Agreement, the NAFTA, and the Uruguay Round Agreements—the Committee has added a new consultation requirement: the President must consult with respect to any other agreement he has entered into or intends to enter into with the country or countries in question.

The Committee believes that the Congress and the American public are entitled to know the full range of understandings and agreements that accompany the formal text of a trade agreement. The Committee intends that the term "agreement," as used in this context, be broadly construed to encompass all kinds of agreements, ranging from formal side agreements entered into pursuant to the President's executive power, to exchanges of letters (with the country or countries in question and with Members of Congress and other interested parties), to any agreed interpretations of the provisions of a trade agreement or any other agreement entered into in conjunction with a trade agreement.

Section 135(e) of the Trade Act of 1974 is amended in sections 2004 and 2007 of this title to require the Advisory Committee for Trade Policy and Negotiations, appropriate policy advisory committees, and each sectoral or functional advisory committee affected by such negotiations to submit a report to the President, the Congress

and the United States Trade Representative on any trade agreement entered into under the authority provided in subsections 2003(a) or (b) of this title. Such reports are to include an advisory opinion on whether and the extent to which an agreement promotes the economic interests of the United States and achieves the applicable purposes and principal negotiating objectives set forth in section 2002 of this title. The sectoral and functional advisory committees are to provide advisory opinions as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

Under the 1988 Act, the advisory committee reports were required to be submitted no later than the date on which the President notified the Congress of his intention to enter into an agreement. In recognition of the fact that important terms of trade agreements often are not determined before the final hours of the negotiations, the Committee's six-month extension of the trade agreement approval procedures for purposes of concluding the Uruguay Round negotiations allowed the private sector advisory committees to file their reports 30 days after the President transmitted his notification. In the view of the Committee, the 30-day delay was helpful in that it allowed the advisory committees to factor in the final terms of the trade agreements in their analysis of the results. The Committee has adopted that approach in this bill. Advisory committees will be required to submit their reports not more than 30 days after the President notifies Congress of his intention to enter into a trade agreement.

Subsection 2004(d) requires the USTR to consult regularly, promptly, and closely with the congressional advisers for trade policy and negotiations appointed pursuant to section 161 of the Trade Act of 1974, as well as with the Senate Finance and House Ways and Means Committees as a whole, and keep the advisers and committees fully apprised of the negotiations. As noted above, consultations should afford Congress a meaningful opportunity to evaluate the negotiations at their final stages—the point at which key, and often controversial, matters are resolved. It is the Committee's view that comprehensive, detailed consultations are required particularly at that point.

In that connection, the Committee expects that the USTR will enter into a formal arrangement, in the form of procedures similar to that agreed to by the Executive Branch in 1975, that will implement this section and section 161 of the Trade Act of 1974 in a manner that will ensure that the advice of the trade advisers and Committee members will be taken fully into account so that they may play a meaningful role once negotiations begin, and, in particular, as they reach a conclusion. In addition, the Committee expects that the trade advisers, as required by section 161, will be fully accredited advisers to United States delegations to international conferences, meetings, and negotiating sessions relating to all trade agreements.

The Committee expects that the USTR will, consistent with past practice, commit to a set of procedures for supplying Members and properly cleared staff with the following documents, whether classified or unclassified: relevant incoming and outgoing cables, state-

ments of Executive Branch position, and formal submissions from the other countries engaged in the negotiations.

In addition, the Committee believes strongly that consultations must be improved in particular as trade negotiations enter their final stages. The Committee is aware that, in many cases, important and controversial issues often are not settled until the final hour of negotiations. Although the Committee recognizes that this is the nature of negotiations, the Committee nonetheless believes that there should be a mechanism in place for more formalized consultation with Committee Members at this critical stage.

Accordingly, it is the Committee's expectation that the USTR will work with Committee Members to develop a set of procedures whereby the USTR or appropriate staff will brief Committee Members and staff on the state of negotiations as they enter their final days. Committee Members will then have the opportunity to provide the USTR with their views as to any potential concerns regarding the status of the negotiations at that time and possible trade-offs that are likely to occur in the waning hours.

The Committee recognizes that both the Executive Branch and the Congress bear the responsibility for ensuring that these consultations are meaningful. Executive Branch negotiators must offer detailed information in a timely manner; Congressional trade advisers and Committee Members must make themselves available when the negotiations enter their final stage, and the requirement to consult is contingent upon such availability.

Subsection 2004(e) also requires the President to request a study by the International Trade Commission (ITC) of the potential economic impact of the proposed agreement at least 90 days before entering into such agreement (the same time that he must notify Congress of his intent to enter into the agreement). The ITC would then be required to submit a report to the President and Congress, within 90 days after the President enters into the agreement, assessing the likely impact of the agreement on the U.S. economy as a whole and specific industry sectors. The Committee believes that such a report should provide an objective assessment of the final results of the negotiations in sufficient time to inform Congress' consideration of any trade agreement and implementing legislation submitted under these procedures.

Section 2005. Implementation of trade agreements

Subsection 2005(a) establishes the basic requirements regarding notification and submission of the agreement and implementing legislation that must be met before a trade agreement subject to the trade agreement approval procedures of this bill (i.e., the fast track procedures) enters into force for the United States. As was the case in the 1988 Act, the President is required to notify the House of Representatives and the Senate of his intention to enter into a trade agreement at least 90 days before doing so, and to publish promptly in the Federal Register notice of his intention. The purpose of this advance notification is to give the Congress an opportunity to review the outcome of the negotiations and assess, before the agreement becomes final, whether the objectives set forth in this Act have been met. The 90-day advance notification is intended to allow sufficient time for the Congress to make its views

known and, if necessary, for the Executive Branch to seek modifications to the agreement before the negotiations are formally concluded.

As in the past, the fast track procedures established in this title do not require the President to submit the agreement and implementing legislation to the Congress within a time certain. The Committee is of the view, however, that the Congress ought to be apprised soon after the agreement is entered into of the changes to U.S. law that will be required in order to implement it. Accordingly, the Committee has added a new provision: within 60 days after entering into an agreement, the President must submit to the Congress a description of the changes to U.S. laws that he considers necessary for the United States to comply with the agreement.

Once the President is ready to send the agreement and proposed implementing legislation to the Congress, subsection 2005(a) requires, as did the 1988 Act, that the President submit the final legal text of the agreement, together with a draft of the implementing bill, a statement of the administrative actions that will be proposed to implement the agreement, and additional supporting information. The supporting information must include: (1) an explanation as to how the implementing bill and proposed administrative action will modify U.S. law; and (2) an assertion that the agreement makes progress in achieving the objectives of this Act, setting forth specific reasons as to how and the extent to which such objectives are met and why and to what extent other objectives are not, how the agreement serves the interests of U.S. commerce, why the implementing bill qualifies for fast track procedures, and the reasons for any proposed administrative action. In addition, the Committee has added a requirement that the President identify whether and how the agreement changes provisions of any previously-negotiated agreement. It is the Committee's expectation that the supporting information as to how the agreement serves the interests of U.S. commerce will also include the report to be prepared by the ITC pursuant to subsection 2004(e), as discussed above.

Subsection 2005(a) carries over a provision from the 1988 Act that requires that the President recommend that the benefits and obligations of any trade agreement eligible for the procedures authorized by this bill be applied solely to the parties to the agreement, in order to minimize the "free rider" problem that arises when the benefits of trade agreements are extended even to those countries that are not parties to the agreement and that have not themselves made binding commitments, if such a distinction is consistent with the agreement. This provision also authorizes the President to recommend that the benefits and obligations of an agreement not apply uniformly to all parties to an agreement, if permitted under the terms of the agreement.

Subsection 2005(b) establishes important checks on the use of the trade agreement approval procedures, prior to the commencement of negotiations, as well as during the course of such negotiations. Paragraph (1) expands upon a provision included in the 1988 Act that disallowed the use of such procedures with respect to implementing legislation for bilateral trade agreements if either this Committee or the House Ways and Means Committee disapproved

of the negotiation of such an agreement within 60 days of the President's notification of his intention to begin negotiations. Under the Committee's bill, the Committees' oversight of the commencement of negotiations would extend to all trade agreements, and not merely bilateral trade agreements. However, as disallowing the use of the trade agreement approval procedures is a serious step, the Committee has provided that both the Senate Finance and Ways and Means Committees must disapprove of their use.

Subsection 2005(b) also incorporates the "procedural disapproval resolution" included in the 1988 Act, which provides for consideration, under expedited procedures, of a resolution denying the use of the trade agreement approval procedures to implement the results of any trade agreement with respect to which the President has failed or refused to consult with the Congress. The Committee's bill expands this provision to apply as well where the President has failed to notify the Congress in accordance with the provisions of section 2004 of this title. The Committee anticipates that the mere availability of this procedure will provide a further incentive for close and continuing consultations with the Congress.

The process for Congressional consideration of procedural disapproval resolutions remains unchanged from the 1988 Act. In the event that both Houses of Congress pass resolutions of disapproval within 60 session days of each other, the use of the trade agreement approval procedures to implement the results of the trade negotiation at issue will be denied. There is no limitation on when the resolution may be introduced or acted upon. These procedures are intended as a check on the Executive Branch throughout the course of the negotiations. Both the Ways and Means Committee and the Finance Committee would be privileged to report a resolution of their respective House at any time the trade agreement approval procedures are in effect. The resolution may originate only with the appropriate Committee in each House of Congress. Once reported by the Finance or Ways and Means Committee, each resolution would itself be considered under expedited procedures analogous to the trade agreement approval procedures potentially applicable to trade agreements, i.e., it would be a privileged matter and could not be amended or delayed. The resolution would be effective only if reported in exactly the form set out in the bill and subject to the time limits noted above.

Section 2006. Treatment of certain trade agreements

Subsection 2004(a) of this bill requires the President to notify the Congress 90 days before commencing negotiations on a trade agreement the implementation of which would be eligible for the fast track approval procedures provided by this Act. Section 2006 waives this requirement for four sets of negotiations: (1) those negotiations under the auspices of the WTO regarding trade in information technology products that commenced before the enactment of this bill; (2) negotiations or work programs that have commenced pursuant to the "built-in" agenda of the agreements administered by the WTO; (3) an agreement with Chile, completing the negotiations that had begun in 1995; and (4) negotiations to achieve a Free Trade Area of the Americas that began in April 1998 in Santiago, Chile.

Because these negotiations have either been initiated or will have commenced by the time this bill is enacted, it is the view of the Committee that no practical purpose would be served by requiring the President to notify the Congress of his intention to begin such negotiations. With respect to the second category of negotiations—those that form part of the WTO's "built-in" agenda, it is the Committee's understanding that those that have commenced (and for which notice is, therefore, not required) are the work program on rules of origin and the negotiations on financial services.

The Committee wishes to emphasize that all of the other notice and consultation requirements of this title, as well as the procedural disapproval resolution procedures of section 2005, will apply to each of the negotiations covered by section 2006.

Section 2007. Conforming amendments

Section 2007 makes conforming changes to a number of provisions of the Trade Act of 1974, as amended, to ensure that the provisions applicable to past extensions of fast track procedures continue to apply. These changes provide, for example, that the usual requirements for advice from the ITC and the private sector advisory committees will continue to apply to agreements negotiated pursuant to the authority provided in this title.

Section 2008. Definitions

Section 2008 defines a number of the terms used in this title. Definitions are provided for the following: "distortion," "trade," "Uruguay Round Agreements," "World Trade Organization," "WTO agreement," and "WTO and WTO member."

C. Title III—Legislation Reauthorizing the Trade Adjustment Assistance Programs

Title III extends the authorization of the three Trade Adjustment Assistance programs through September 30, 2000.

1. Background

Title II of the Trade Act of 1974, as amended, authorizes three trade adjustment assistance (TAA) programs for the purpose of providing assistance to individual workers and firms that are adversely affected by the reduction of barriers to foreign trade. Those programs include—

The general TAA program for workers provides training and income support for workers adversely affected by import competition.

The TAA program for firms provides technical assistance to qualifying firms. (Both the TAA programs for workers and for firms were first established by the Trade Expansion Act of 1962.)

The third program, the North American Free Trade Agreement (NAFTA) program for workers (established by the North American Free Trade Agreement Implementation Act of 1993), provides training and income support for workers adversely affected by trade with or production shifts to Canada and/or Mexico.

All three programs expire on September 30, 1998. The TAA program for firms is also subject to annual appropriations.

2. General Description of Title

Section 3001 of the Act reauthorizes each of the three TAA programs through September 30, 2000. This provision is effective on the date of enactment.

The Committee has begun a comprehensive review of the U.S. trade laws. As a part of this review, the Committee intends to examine the TAA programs to determine what changes, if any, are needed to allow the programs to operate in a more effective and efficient manner. Among other things, the Committee intends to consider whether the term "article" in subsection 251(c)(1)(B)(ii) of the Trade Act of 1974 should be clarified so that it is not construed in such a manner as to discriminate against manufacturers of jewelry and other small items. Such clarification may be necessary because it is the intent of the Committee on Finance that the term "article" should be construed in such a way that it applies equitably to manufacturers of all products, including jewelry and other small items.

D. Title IV—Legislation Establishing a Mechanism for Identifying Market Access Barriers to Agricultural Products

Title IV establishes a mechanism for identifying countries that deny market access to United States agricultural products and for investigating and eliminating such barriers.

1. Background

Title IV incorporates S. 219, which was introduced on January 28, 1997 by Senators Daschle and Grassley, with one modification. Title IV would expand the product coverage from the value-added agricultural products covered under S. 219 to include all U.S. agricultural commodities and products, including forest products, fish and seafood.

A combination of natural disasters, crop disease, low commodity prices, and the loss of Asian markets due to the ongoing economic crisis in that region have depressed farm income and the economies of rural areas. Approximately 40 percent of farm income is currently derived from foreign sales. These circumstances mandate greater attention to the removal of unfair trade barriers that displace American agricultural products in foreign markets in an effort to help alleviate the growing crisis in American agriculture.

Title IV establishes a mechanism for identifying countries that deny market access to United States agricultural products and for investigating and eliminating such barriers. This mechanism is modeled on the so-called Special 301 procedures that have proved successful in improving protection of American intellectual property rights in foreign markets and similar procedures that have proved successful in gaining market access for U.S. exports of telecommunications equipment and services.

2. General Description of Title

Section 4001. Short title

Section 4001 provides that the title of this provision shall be the "United States Agricultural Products Market Access Act of 1998."

Section 4002. Purposes

Section 4002 identifies three purposes for this title:

(1) To reduce or eliminate foreign unfair trade practices and to remove constraints on fair and open trade in agricultural products;

(2) To ensure fair and equitable market access for exports of United States agricultural products; and

(3) To promote free and fair trade in agricultural products.

Section 4003. Identification of countries that deny market access

Section 4003 amends Chapter 8 of title I of the Trade Act of 1974 to add a new section 183. Subsection 183(a) establishes a process by which the USTR must identify those foreign countries that deny fair and equitable market access to United States agricultural products (including forest products, fish and seafood) or apply unjustified sanitary or phytosanitary standards to agricultural products imported from the United States.

Subsection 183(b) requires that the USTR designate as "priority foreign countries" those countries:

That engage in or have the most onerous or egregious acts, policies, or practices that deny fair and equitable market access to United States agricultural products;

Whose acts, policies or practices have the greatest adverse impact (actual or potential) on the relevant United States products; and

That are not engaged in good faith negotiations with the United States, either bilaterally or multilaterally, to provide fair and equitable market access to U.S. agricultural exports.

Subsection 183(b) further requires the USTR to consult with the Secretary of Agriculture and other appropriate officials of the federal government in determining which countries and practices would be identified as priorities. The USTR is also required to take into account information provided from U.S. agricultural interests, including petitions filed under section 302 of the Trade Act of 1974 requesting investigations of particular acts, policies, or practices that impose an unfair burden on U.S. agricultural exports.

The USTR must also take into account a variety of other factors, including the history of agricultural trade relations with the foreign country and any history of past efforts to achieve fair and equitable market access for U.S. agricultural products. Subsection 183(c) provides that the USTR may, at any time, either identify or revoke the identification of any foreign country as a priority foreign country.

Subsection 183(e) requires the USTR to publish in the Federal Register a list of foreign countries identified under subsection 183(a). Subsection 183(f) requires that the USTR must report annually regarding the countries identified under subsection 183(a) to the Senate Committees on Finance and on Agriculture, Nutrition,

and Forestry and the House Committees on Ways and Means and on Agriculture. This report must describe the actions taken under section 183 during the twelve months preceding the report and the reasons for such actions, including a description of progress made in achieving fair and equitable market access for United States agricultural products.

Section 4004. Investigations

Section 4004 amends subparagraph (A) of subsection 302(b)(2) of the Trade Act of 1974 to require that the USTR must initiate a formal investigation under that section of those practices that formed the basis for a foreign country being identified as a priority foreign country. Such investigation would not be necessary, however, if the practices are at the time the subject of another section 301 investigation or action or the investigation would be detrimental to U.S. economic interests. Subsection 4004(b) makes conforming amendments to sections 302 and 304 of the Trade Act of 1974.

E. Title V—Legislation To Implement the OECD Shipbuilding Agreement

Title V would approve and implement the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry ("Shipbuilding Agreement"), resulting from negotiations conducted under the auspices of the Organization for Economic Cooperation and Development ("OECD"). Title V incorporates the provisions of the OECD Shipbuilding Trade Agreement Act, S. 1216, as reported by the Senate Committee on Finance on September 24, 1997 and by the Senate Committee on Commerce, Science and Transportation on November 10, 1997, with a few minor modifications.

1. Background

On June 8, 1989, the Shipbuilders Council of America ("SCA"), representing the U.S. shipbuilding industry, filed a petition under section 301 of the Trade Act of 1974, alleging that foreign government subsidies to the shipbuilding industry constituted an unjustifiable, unreasonable, or discriminatory trade practice that burdens or restricts U.S. commerce. The SCA withdrew the petition on July 21, 1989, following a commitment by the U.S. Government to initiate negotiations on an agreement to discipline government support to the shipbuilding and repair industry within the framework of the Working Party on Shipbuilding of the OECD Council. These negotiations commenced on October 24, 1989, when the United States notified the Executive Committee of the OECD of its intention to negotiate such an agreement.

After more than five years of negotiation, the Shipbuilding Agreement was signed on December 21, 1994, by the Commission of the European Communities, and the Governments of Finland, Japan, the Republic of Korea, Norway, Sweden, and the United States. Together, the signatories account for approximately 80 percent of global shipbuilding capacity.

The Shipbuilding Agreement applies only to the construction and repair of self-propelled, seagoing commercial vessels of 100 gross

tons and above (including certain specialized vessels) and tugs of 365 kilowatts or more. It does not cover the construction of naval vessels or the outfit and repair of vessels for military purposes.

The Shipbuilding Agreement has four general sections. First, with some limited exceptions, the Shipbuilding Agreement requires the elimination of virtually all subsidies to the shipbuilding industry granted either directly to shipbuilders or indirectly through ship operators or other entities. Second, to avoid trade-distorting financing programs, the Shipbuilding Agreement also establishes common rules to discipline government financing for export and domestic ship sales. Third, the Shipbuilding Agreement includes an "injurious-pricing code," modeled on the antidumping rules of the World Trade Organization ("WTO"), which would allow signatories to assess an offsetting injurious-pricing charge against foreign shipbuilders who sell ships at unfairly low (i.e., dumped) prices that injure domestic shipbuilders. The injurious-pricing code also permits signatories to impose specified countermeasures against a foreign shipbuilder that is subject to an affirmative injurious-pricing determination, if the shipbuilder does not pay the injurious-pricing charge. Finally, the Shipbuilding Agreement includes binding rules for dispute settlement in the OECD, which are patterned after the WTO's dispute-settlement regime.

The Shipbuilding Agreement is scheduled to enter into force 30 days after all signatories deposit instruments of ratification, acceptance, or approval with the OECD Secretariat. In order for the United States to complete its ratification, legislation must be enacted by Congress to bring U.S. law into compliance with the Shipbuilding Agreement.

On October 23, 1995, Senator Breaux introduced legislation (S. 1354) to implement the Shipbuilding Agreement. On December 11, 1995, similar legislation (H.R. 2754) was introduced in the House. On May 8, 1996, the Committee on Finance reported H.R. 3074, which contained a number of trade items, including legislation to implement the Shipbuilding Agreement. Subsequently, on June 13, 1996, the House of Representatives passed H.R. 2754, which, as amended, contained major substantive differences from the bill reported by the Committee on Finance. The Senate was unable to consider H.R. 2754 before the conclusion of the 104th Congress.

On September 24, 1997, the Finance Committee reported an original bill (S. 1216) which was sequentially referred to the Committee on Commerce, Science and Transportation, which reported the bill with a few modifications on November 10, 1997.

It is the Committee's view that implementation of the Agreement is long overdue. Accordingly, the Committee has renewed its efforts to seek prompt passage of this legislation by including it in the Trade and Tariff Act of 1998.

2. Summary of Title

The Shipbuilding Agreement establishes a mechanism for the determination of injurious pricing in the construction and sale of seagoing vessels, in a manner analogous to the provisions in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("WTO Antidumping Agreement"). In addition, the Shipbuilding Agreement provides for the assess-

ment of an injurious-pricing charge and countermeasures where appropriate—remedies that are different from the antidumping provisions under Title VII of the Tariff Act of 1930, as amended, which implements the WTO Antidumping Agreement in U.S. law. Because ocean-going vessels engaged in international trade are technically not imported or entered for consumption in the United States, it is not possible to use the antidumping remedies of Title VII of the 1930 Act to cover the sale of vessels at less than fair value. Accordingly, separate statutory authority is required to implement the Shipbuilding Agreement.

A. INJURIOUS PRICING AND COUNTERMEASURES

Section 5102 of the bill would establish a new Title VIII of the Tariff Act of 1930, as amended, in order to create an injurious-pricing mechanism applicable to shipbuilding. This mechanism would permit the collection of an injurious-pricing charge against ocean-going vessels sold to U.S. buyers at a price below normal value when that sale injures a U.S. shipbuilding industry. This mechanism also allows for the imposition of countermeasures against a shipyard that fails to pay the injurious-pricing charge.

The new Title VIII would be analogous to the current antidumping provisions of Title VII of the 1930 Act, which set forth procedures under U.S. law for assessment of antidumping duties. The specific injurious-pricing provisions differ from the antidumping provisions in Title VII of the 1930 Act only where necessary to take into account differences between the Shipbuilding Agreement and the WTO Antidumping Agreement due to the unique characteristics of the construction and sale of ocean-going vessels.

The new Title VIII would also provide for judicial review of injurious pricing and countermeasures determinations in the U.S. Court of International Trade, with subsequent appellate review in the U.S. Court of Appeals for the Federal Circuit.

B. OTHER PROVISIONS

Title V also includes the following changes or additions to current law:

Repairs made in a Party to the Shipbuilding Agreement on U.S.-flagged vessels of a type covered by the Shipbuilding Agreement and on integrated tug-barges would be exempt from the 50 percent duty imposed under section 466 of the Tariff Act of 1930 on the cost of repairs made outside the United States on a U.S.-flagged vessel.

The requirements of certain tax and subsidy programs available under the Merchant Marine Act, 1936, to vessels constructed in the United States, as well as government guarantees available under Title XI of the Merchant Marine Act, 1936, for financing the construction, reconstruction or reconditioning of U.S. built vessels, are changed to conform to the requirements of the Shipbuilding Agreement and the related OECD Understanding on Export Credits for Ships. Changes to Title XI will not take effect until January 1, 2001.

Private persons other than the U.S. Government are prohibited from asserting any cause of action or defense under the Shipbuilding Agreement in U.S. courts.

The President would be required to commence U.S. withdrawal from the Shipbuilding Agreement when one or more Shipbuilding Agreement Parties, accounting for a specified tonnage of construction of vessels covered by the Shipbuilding Agreement, withdraws from the Agreement.

Procedures for withdrawing Congressional approval of the Shipbuilding Agreement when a Shipbuilding Agreement Party undertakes responsive measures pursuant to a determination that the Jones Act[1] has significantly undermined the balance of rights and obligations under the Shipbuilding Agreement.

3. General Description of Title

Section 5001. Short title; purposes; table of contents

Section 5001 provides that the title may be cited as the "OECD Shipbuilding Trade Agreement Act." It also lists three purposes of the Act:

(1) To enhance the competitiveness of U.S. shipbuilders which has been diminished as a result of foreign subsidies and predatory pricing practices;

(2) To ensure that U.S. ownership, manning, registry, and construction requirements for coastwise trade vessels, which have provided the Department of Defense with mariners and assets in times of national emergency, cannot be compromised by the Shipbuilding Agreement; and

(3) To strengthen the U.S. shipbuilding industrial base to ensure that its full capabilities are available in time of national emergency.

A. SUBTITLE A—GENERAL PROVISIONS

Section 5101. Approval of the Shipbuilding Agreement

Section 5101 provides that the Congress approves the Shipbuilding Agreement, which resulted from negotiations conducted under the auspices of the OECD and which was entered into on December 21, 1994.

Section 5102. Injurious pricing and countermeasures relating to shipbuilding

Section 5102 adds a new Title VIII to the Tariff Act of 1930. Title VIII contains four subtitles, described section-by-section below. Because Title VIII is modeled on the antidumping statute in Title VII of the Tariff Act of 1930, this description outlines only the differences between the two titles.

NEW SUBTITLE A—INJURIOUS PRICING CHARGE AND COUNTERMEASURES

Section 801. Injurious pricing charge

The new section 801 of the Tariff Act of 1930 would require the imposition of a one-time injurious-pricing charge against a foreign shipbuilder if the Department of Commerce ("Commerce") deter-

[1] The Merchant Marine Act, 1920 (46 App. U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App. U.S.C. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II of the Shipbuilding Agreement.

mines that a vessel produced by that shipbuilder has been sold directly or indirectly to a U.S. buyer at less than its fair value and the International Trade Commission ("ITC") determines that an industry in the United States is or has been materially injured or threatened with material injury, or the establishment of an industry in the United States is or has been materially retarded by reason of the sale of that vessel. The amount of the injurious-pricing charge would be the amount by which normal value exceeds the export price. The injurious-pricing charge would be assessed once for the sale in question. After the charge is paid, there would be no continuing liability on future sales or scrutiny of sales of other vessels produced by the foreign shipbuilder unless a separate investigation is conducted with respect to each of those sales.

The new section 801 is modeled on and analogous to section 731 of Title VII of the 1930 Act. However, the new Title VIII contains several changes, which are required to take into account the unique characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement. Specifically, because ocean-going vessels engaged in international trade are technically not imported or entered for consumption in the United States, the Shipbuilding Agreement and Title VIII would permit investigations to be commenced when a vessel is sold directly or indirectly to a U.S. buyer, regardless of whether the vessel is imported or entered for consumption in the United States.

Thus, the traditional antidumping mechanism of imposing an antidumping duty on future entries of imported merchandise would not provide a domestic shipbuilding industry with effective relief. Accordingly, the Shipbuilding Agreement and the new Title VIII would establish a one-time charge to be assessed against the shipyard producing the injuriously-priced vessel.

The Shipbuilding Agreement further provides that there must be a demonstration that there is or has been material injury by reason of the sale of the vessel or vessels in question. In contrast, the WTO Antidumping Agreement provides that there must be a demonstration that there is material injury by reason of imports. Accordingly, the new section 801 of the 1930 Act reflects the difference by requiring the ITC to determine whether there is or has been material injury by reason of the sale of the injuriously-priced vessel.

Accordingly, the Committee intends that the material injury standards of Title VII of the 1930 Act and the new Title VIII be interpreted differently consistent with the particular nature of the material injury inquiry under the two titles.

Section 802. Procedures For instituting an injurious-pricing investigation

The new section 802 added by the Trade and Tariff Act of 1998 sets forth the procedures for conducting an injurious-pricing investigation. The new subsection 802(a) describes procedures for initiation by Commerce and provides that an investigation may be self-initiated only within six months after the time that Commerce first knew or should have known of the sale of the vessel. Subsection 802(b) describes the procedures for initiation by petition. These procedures require that a petition be filed within either six or nine

months (depending upon the circumstances) from the time the petitioner knew or should have known of the sale of the vessel, but no later than six months after the delivery of the vessel. If these deadlines are not met, an investigation may not be commenced.

The new subsection 802(b)(1)(B)(i) provides that if a petitioner is a producer, it must show that it had the capability to produce the subject vessel. In addition, if the sale of the subject vessel was made through a bidding process that was either a broad multiple bid or on which the producer was invited to bid, the petitioner must show that it made a timely effort to obtain the sale through a proposal that met bid specifications. If the sale was not made through a broad multiple bid and the petitioner was not invited to bid, but knew or should have known of the proposed purchase of the vessel in question, the petitioner must show it made timely efforts to conclude a sale consistent with the buyer's requirements.

In some instances, a petitioner may be capable of producing the vessel in question, but was not invited to participate in a bid because the buyer claims that it did not know that the petitioner was capable of producing a vessel to specification. In determining standing pursuant to the new subsection 802(b)(1)(B)(i)(I), the Committee does not intend that the Commerce Department narrowly construe the definition of "broad multiple bid" in the new subsection 861(31) to require that the buyer have actual knowledge of the petitioner's capability to produce the required vessel. Rather, the Commerce Department should examine whether the buyer extended invitations to at least all those producers that the buyer knew or reasonably should have known were capable of producing the required vessel. In considering this question, the Commerce Department should consult with the Maritime Administration. The Commerce Department should also consider whether the petitioner may still have standing pursuant to the new subsection 802(b)(1)(B)(i)(III).

The new subsection 802(d)(1) provides a 45-day deadline, with no extension, for initiating an investigation after the filing of a petition, assuming that the petition meets the requirements set forth. Among these requirements, the new subsection 802(d)(4) sets forth certain requirements for petitioners, including the requirement that a petitioner must file "on behalf of" a domestic industry. Under this requirement, there must be sufficient industry support for the petition. Support is deemed to be sufficient when the following criteria are met: domestic producers or workers who support the petition must account for at least 25 percent of the total capacity of domestic producers capable of producing the like vessel; and domestic producers or workers who support the petition must account for more than 50 percent of the total capacity to produce the like vessel of that portion of the industry expressing a view on the petition.

The new subsection 802(d)(6) provides that Commerce may not initiate an injurious-pricing investigation if a third country that is a WTO member, but not a party to the Shipbuilding Agreement, has initiated an antidumping proceeding against the same vessel that has been pending for not more than a year, or that has been completed and resulted in the imposition of antidumping measures or a negative determination.

The procedures for initiating an injurious-pricing investigation under the new Title VIII differ in a number of respects from procedures for initiating an antidumping investigation under Title VII of the 1930 Act. Because most injurious-pricing investigations will involve only one ship, it was deemed appropriate to establish deadlines in the Shipbuilding Agreement for the filing of petitions and for self-initiation of an investigation with respect to that ship. Such deadlines are not needed in an antidumping investigation under Title VII of the 1930 Act, in which all entries of the subject imports during a specified period (generally 12 months for Commerce and 3 years for the ITC) are subject to investigation.

In addition, because vessels are generally unique and often made to individual specifications, a domestic producer may not have produced a vessel actually identical to the subject vessel. Nonetheless, the domestic producer could still be injured as a result of the sale because that producer was capable of producing the subject vessel. By contrast, under Title VII of the 1930 Act, investigations require that the petitioner, if a producer, actually produce or manufacture the like product (except in the context of a determination whether the establishment of a domestic industry is materially retarded by reason of dumped imports). Moreover, the petitioner under Title VII of the 1930 Act is not required to show that it made an effort to sell like merchandise to the purchaser.

The new Title VIII provides for a 45-day period for determining whether to initiate an injurious-pricing investigation, as opposed to 20 days with a possible extension to 40 days in an antidumping case under subsection 732(c)(1) of Title VII of the 1930 Act, because of the Administration's concern that the new representation requirements and deadlines for filing petitions under the new Title VIII may create additional complexities requiring more time to determine the sufficiency of the petition.

Finally, Title VII of the 1930 Act does not provide for the delay or termination of an antidumping investigation if another WTO member undertakes antidumping or other measures against like merchandise from the subject country. Under the new Title VIII, however, a U.S. producer could seek to bring an injurious-pricing action against a vessel that is also subject to an antidumping action in a WTO member country that is not a party to the Shipbuilding Agreement. In this situation, the Shipbuilding Agreement and the new Title VIII would require that the injurious-pricing action not be initiated in certain circumstances.

Section 803. Preliminary investigations

The new subsection 803(a) of the 1930 Act would require the ITC to make its preliminary determination within 90 days after the filing of the injurious-pricing petition. The new subsection 803(b) states that Commerce is to make its preliminary determination within 160 days after initiating its investigation or 160 days after the date of delivery of the vessel in a cost or constructed-value investigation. An extension is permitted in extraordinarily complicated cases or for good cause until not later than 190 days after initiation or date of delivery, as the case may be.

These time periods for preliminary determinations in the new Title VIII cases are generally longer than in antidumping inves-

tigations under Title VII of the 1930 Act. This difference is related to the different nature of the investigations under the two titles. Due to the unique nature of the construction of vessels, a new Title VIII cost investigation must be delayed until construction is completed to allow Commerce to obtain actual cost information. Tying Commerce's investigation to the date of the vessel's delivery may result in a delay of the investigation for several years due to the length of time necessary to construct a vessel.

Because the remedies established under Title VII of the 1930 Act and the new Title VIII are completely different, the effect of a preliminary affirmative Commerce determination would be different as well. Title VII of the 1930 Act provides for provisional relief in the form of the posting of a bond or cash deposit by the importer in the amount of the preliminary dumping margin and the collection of duties on entries of the subject merchandise after an affirmative preliminary determination has been rendered. Under the new Title VIII, however, no provisional relief after the preliminary investigation is necessary because the remedy consists entirely of a one-time charge, imposed on the shipbuilder after a final determination has been made.

Section 804. Termination or suspension of investigation

The new subsection 804(d) provides for the suspension of an injurious-pricing investigation if a third country that is a WTO member, but not a party to the Shipbuilding Agreement, initiates an antidumping proceeding with respect to the same vessel. The investigation would be terminated if the third country proceeding results in the imposition of antidumping measures or a negative determination. If the third-country proceeding ends without the imposition of antidumping measures or a negative determination, or if it is not concluded within one year (unless antidumping measures are subsequently imposed), the suspension would end and the Title VIII investigation would proceed.

This rule under the new subsection 804(d) contrasts with Title VII of the 1930 Act, which does not allow for the suspension or termination of an investigation based on action by a third country. However, the Shipbuilding Agreement contemplates the situation where, for example, a U.S. producer seeks to bring an action under the new Title VIII against a vessel that has been sold to a buyer in the United States and is also subject to an antidumping investigation by a WTO Member country that is not a party to the Shipbuilding Agreement. The rule in the Shipbuilding Agreement and the new Title VIII would require that the injurious-pricing investigation be terminated or suspended in such situations to avoid multiple investigations of the subject vessel.

Section 805. Final determinations

The new subsection 805(a) provides that Commerce would be required to make its final determination in an injurious-pricing investigation under the new Title VIII not later than 75 days after its preliminary determination. This period may be extended under certain circumstances to 290 days after initiation of the investigation in ordinary cases or after delivery of the vessel in cost or constructed-value investigations.

The new subsection 805(b) provides that the ITC would be required to make its final determination before the later of the 120th day on which Commerce makes an affirmative preliminary determination or the 45th day after the day on which Commerce makes an affirmative final determination.

The extension for completion of Commerce's injurious-pricing investigation is longer under the new Title VIII than is provided for under section 735 of Title VII of the 1930 Act in an antidumping investigation. This difference between the two titles is related to the different nature of the investigations and the substantial delays that may be caused by use of actual cost data with respect to the construction of ships.

Section 806. Imposition and collection of injurious pricing charge

In the event of final affirmative determinations by Commerce and the ITC under the new Title VIII, Commerce would be required to publish an order imposing a one-time injurious-pricing charge on the foreign shipbuilder in an amount equal to the injurious pricing margin for the vessel subject to investigation. The shipbuilder must pay the charge within 180 days. However, the payment period may be extended under extraordinary circumstances, subject to interest charges. Once the injurious-pricing charge is paid, the shipbuilder would not be subject to any continuing liability on the vessel in question or on future sales or scrutiny of sales of other vessels constructed by that shipbuilder unless a new investigation under the new Title VIII is conducted with respect to each of those future sales.

This injurious-pricing remedy under the Shipbuilding Agreement and the new Title VIII is different than the antidumping remedy under Title VII of the 1930 Act because of the differences between the sale of imported merchandise and the nature of sales transactions involving ships. Because vessels engaged in international trade do not enter the United States for consumption, the traditional antidumping mechanism of imposing an antidumping duty on future entries would not provide the domestic industry with effective relief. Accordingly, the Shipbuilding Agreement and the new Title VIII would establish a one-time charge to be assessed against the shipyard producing the injuriously-priced vessel. Because the remedy would be a one-time charge, there is no need for an administrative or sunset review of the order as provided for under section 751 with respect to antidumping orders under Title VII of the 1930 Act.

Section 807. Imposition of countermeasures

The new section 807 provides that failure to pay the injurious-pricing charge imposed against a foreign shipbuilder subjects that shipbuilder to the imposition of countermeasures. The countermeasures would take the form of a temporary denial (for a period of up to four years after delivery of the vessel subject to countermeasures) of privileges to load or unload cargo or passengers in the United States to vessels contracted to be built by the offending shipbuilder within a period of up to four years after the effective date of the countermeasures.

New subsections 807 (b) and (c) set forth the procedures for establishing countermeasures. Specifically, the new subsection 807(b) would require Commerce to publish a notice of an intent to impose countermeasures not later than 30 days before the expiration of the time for payment of the injurious-pricing charge. Under the new subsection 807(c), Commerce would be required to issue a determination and order imposing countermeasures within 90 days after the notice of intent is published. In issuing this order, Commerce would be required to determine whether an interested party has demonstrated that the scope or duration of the countermeasures should be narrower or shorter than that set forth in the notice of intent.

The new subsection 807(d) provides that if countermeasures are imposed, they may be reviewed annually as to scope and duration.

The new subsection 807(e) provides that countermeasures may be extended in scope and duration beyond four years only if a panel established under the Shipbuilding Agreement agrees that such extension is appropriate.

Finally, the new subsection 807(f) would require Commerce to publish each year a list of all vessels subject to countermeasures and to provide notice of the imposition of countermeasures to certain interested parties.

The countermeasures procedure under the new Title VIII is essentially an enforcement mechanism. Neither Title VII of the 1930 Act nor the WTO Antidumping Agreement provide for the imposition of countermeasures. However, an injurious-pricing order under the new Title VIII would not apply to future vessels delivered by the shipyard in question. Therefore, the United States would have no recourse in enforcing the order if the shipyard refused to pay the injurious-pricing charge. Accordingly, it is necessary to establish a mechanism to ensure that a shipyard is unable to avoid the remedial effect of an order simply by not paying the injurious-pricing charge, and the new Title VIII and the Shipbuilding Agreement establish the countermeasures procedure as the enforcement mechanism.

The Committee notes that under the new subsection 861(17)(G) of Title VIII, purchasers of vessels potentially subject to countermeasures have standing to participate fully in proceedings concerning the imposition of countermeasures. The Committee expects that the interests of such purchasers, as well as other interested parties (such as domestic producers, respondents, workers, and relevant trade or business associations) be taken into account in making countermeasure determinations.

The Committee also notes that the countermeasures would apply to vessels contracted to be built by the offending foreign producer after the date of the order imposing countermeasures. Specifically, a vessel would be covered if the material terms of sale for that vessel are established within a period of four consecutive years beginning 30 days after the notice of intent is published. The Committee expects that purchasers will be given ample notice as to vessels that may be potentially covered by the countermeasure order and wishes to avoid situations in which purchasers would not have sufficient notice that changes in contract terms could subject the vessel to countermeasures.

Accordingly, the Committee intends that only significant changes in the material terms of a legitimate contract entered into before the effective date of the countermeasures order should push the sale into the period covered by countermeasures if those changes were made after the order's effective date. Such significant changes amount to more than, for example, merely changing the delivery date because of construction delays, changing vessel specifications in a manner that does not affect the overall nature of the vessel subject to the contract, or other minor changes in price or terms. Of course, the Committee also intends that a vessel would be included in the countermeasure order if a sham contract were established covering the vessel before the effective countermeasure date simply to avoid imposition of countermeasures.

Section 808. Injurious pricing petitions by third countries

The new section 808 provides that the government of a party to the Shipbuilding Agreement may file a petition with the USTR that requests an investigation to determine whether a vessel from another Shipbuilding Agreement Party has been sold directly or indirectly to one or more U.S. buyers at less than its normal value and that an industry in the petitioning country is materially injured by reason of the sale. After consulting with Commerce and the ITC, USTR would be required to determine whether to initiate an investigation. However, USTR would be able to proceed to initiate the investigation only after obtaining the approval of the Parties Group under the Shipbuilding Agreement.

The procedure in the new section 808 to allow third countries to file injurious-pricing petitions is in accordance with the requirements of the Shipbuilding Agreement and is intended to provide an opportunity to conduct an investigation to determine whether injury by reason of an injuriously-priced sale is experienced in another Shipbuilding Agreement Party. Section 808 is comparable to the procedure under Title VII of the 1930 Act, section 783, which allows the government of a WTO party to file a petition with USTR requesting the initiation of an antidumping investigation to determine whether there is material injury to an industry in the petitioning country by reason of dumped imports entered for consumption in the United States.

Section 809. Third country injurious pricing

The new section 809 addresses concerns over the effects on the U.S. industry resulting from the injurious pricing of vessels sold to buyers in Shipbuilding Agreement Parties other than the United States. The section establishes procedures analogous to section 1317 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 1677k) regarding third-country dumping. These procedures permit the domestic industry to petition the USTR if the industry has reason to believe that a vessel has been sold in another party to the Shipbuilding Agreement at less than fair value and such sale is injuring the U.S. domestic industry.

If USTR determines that there is a reasonable basis for the allegations in the petition, USTR shall submit an application to the appropriate authority of the Shipbuilding Agreement Party requesting that an injurious-pricing action be taken on behalf of the

United States under the laws of that country with respect to the sale of the vessel in question. At the request of USTR, the appropriate officers of the Commerce Department and the ITC are to assist USTR in preparing any such application.

After submitting the application to the appropriate authorities of the Shipbuilding Agreement Party, USTR must seek consultations with such authorities regarding the requested action. The Committee understands that the Shipbuilding Agreement Party would be able to proceed to initiate an investigation requested by the United States only after obtaining the approval of the Parties Group under the Shipbuilding Agreement. If the government of the Shipbuilding Agreement Party refuses to take any injurious-pricing action, USTR must consult with the domestic industry on whether further action under any other U.S. law is appropriate.

NEW SUBTITLE B—SPECIAL RULES

Section 821. Export price

The new section 821 sets forth the rules for determining the export price to be used in injurious-pricing investigations. "Export price" is defined as the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated U.S. buyer. Such a sale would include any transfer in ownership interest, including by lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a U.S. buyer. The new subsection 821(b) sets forth the adjustments to be made to export price.

The definition of export price under the new section 821 is similar to the definition in Title VII of the 1930 Act (section 772). However, Title VII of the 1930 Act also contains a definition of the concept "constructed export price." Because of the unique manner in which vessels are sold, there is no need for a constructed export price concept in the context of an injurious-pricing determination under the new Title VIII.

Section 822. Normal value

The new subsection 822(a)(1) added by this bill provides that the normal value of the subject vessel is the price of a like vessel in the home market, as adjusted, if sold at a time reasonably corresponding to the time of the sale under investigation. The new subsection 822(a)(1)(D) defines such contemporaneous sales as being within three months before or after the sale of the subject vessel or, in the absence of such sales, such longer period as Commerce determines would be appropriate. If home-market sales are not available, Commerce would be required to determine normal value based on the price of a like vessel in third-country sales. Only if such sales are inappropriate could Commerce use constructed value to determine normal value.

The new subsection 822(e) provides that in constructed-value situations, normal value would be derived on the basis of a statutory formula, which is the sum of the costs of production, plus the actual amount of profit and selling, administrative, and general expenses (where actual data are available). If constructed value is

used, the new subsection 803(b)(1)(C) provides that the investigation may be delayed until the construction of the ship in question has been completed, even though the petition was filed at the time of contract.

The new subsection 822(b) states that if Commerce determines that a home-market sale was made at less than the cost of production and was at a price that does not permit recovery of all costs within five years, that sale may be disregarded in determining normal value. If a sale is disregarded, normal value would be based on another sale of a foreign like vessel in the ordinary course of trade. If no such sale is available, then Commerce must use constructed value to determine the normal value of the subject vessel.

The new subsection 822(f)(1)(C) provides for adjusting costs if they have been affected by startup operations. Subsection 822(f)(1)(D) would require that costs due to "extraordinary circumstances" such as labor disputes, fire, and natural disaster, be excluded.

The rules applicable to normal value in the new Title VIII are similar to those of Title VII of the 1930 Act (section 773), altered only where necessary to account for the lengthy periods required to construct ships and the fact that, due to the unique nature of the shipbuilding industry, there often are few, if any, vessels constructed by the foreign shipbuilder that may be used as an appropriate comparison. Title VII of the 1930 Act contains no special provision for adjusting costs due to "extraordinary circumstances" such as labor disputes, fire, or natural disaster.

The Committee understands that Commerce expects to use constructed value in most investigations because of lack of actual comparable sales. Nonetheless, the Committee expects that Commerce will make every effort to base normal value on home market or third-country sales when available within a reasonably coincident period.

Section 823. Currency conversion

Under the new subsection 823(a), Commerce would be required to convert foreign currencies into U.S. dollars using the exchange rate in effect on the date of sale of the subject vessel, except that if it is established that a currency transaction on forward markets is directly linked to a sale under consideration, the rate specified in the forward-sale agreement shall be used.

The new subsection 823(b) would define the date of sale as the date of the contract of sale. If the material terms of sale are significantly changed after that date, the date of sale would be the date of the change, and Commerce would be required to adjust for any unreasonable effect on the injurious-pricing margin due only to fluctuations in the exchange rate between the original and the new date of sale.

The provisions of the new section 823 are essentially the same as under Title VII of the 1930 Act, specifically section 773A. Unlike the WTO Antidumping Agreement, however, the Shipbuilding Agreement does not require that, in converting currencies, fluctuations in exchange rates are to be ignored. This difference between the two agreements, which is reflected in the new Title VIII, accounts for differences in the respective investigations under the two

titles, as well as the particular characteristics of the shipbuilding industry. In an antidumping investigation under Title VII of the 1930 Act, Commerce generally investigates multiple transactions during the 12 months prior to the filing of the petition. During that period of time, the exchange rate may fluctuate or change. Accordingly, under Title VII of the 1930 Act, Commerce is required to allow exporters time to adjust their export prices in response to sustained changes in the exchange rate. However, most of the new Title VIII injurious-pricing investigations would involve only a single sales transaction.

Furthermore, two years or more may elapse between the time a ship contract is signed and ship construction is completed. Because of the long lead-time, during which numerous contract modifications may occur that could change the date of sale, there is much greater potential for movements in exchange rates to distort unreasonably the margin calculation for that sale. Therefore, the new section 823 requires adjustments to eliminate such distortions.

NEW SUBTITLE C—PROCEDURES

Sections 841 through 845. Procedures

The new sections 841 through 845 set forth procedural requirements concerning the injurious-pricing mechanism. Specifically, the new section 841 provides that, upon request, Commerce and the ITC are each to hold hearings during their investigations.

The new section 842 provides for determinations on the basis of the facts available. As in section 776 of Title VII of the 1930 Act, the option to use adverse inferences would be limited to those cases in which the agency finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Moreover, whenever the agency relies on secondary information rather than information obtained during the course of the investigation, the agency, to the extent practicable, would be required to corroborate that information from independent sources that are reasonably at its disposal.

The new section 843 sets forth the requirements for making information concerning the investigation available to the public, treating information as proprietary, disclosing proprietary information under protective order, serving submissions on other parties, handling violations of protective orders and sanctions, providing opportunity for comment by vessel buyers, and publishing determinations.

The new section 844 sets forth procedures for conducting investigations, including certification of submissions, the manner for handling difficulties by the parties in meeting requirements of the investigation, treatment of deficient submissions, use of information submitted by the parties, non-acceptance of submissions, public comment on information, and verification of information submitted. The provision would require that the agencies not decline to consider information submitted by an interested party that is necessary to the determination but does not meet all of the requirements of the agency, if the information is submitted by the established deadline, it can be verified (where appropriate), it is not so incomplete that it cannot serve as a reliable basis for reaching a

determination, the interested party has demonstrated that it has acted to the best of its ability to provide the information and meet the requirements, and that the information can be used without undue difficulty.

All of these procedural requirements under the new Title VIII are the same as the procedures under Title VII of the 1930 Act in sections 774, 776, 777, and 782 with respect to antidumping investigations. In addition, because the Shipbuilding Agreement provides that injurious-pricing determinations are subject to dispute resolution before the OECD, the new section 845 sets forth requirements for administrative action following OECD panel reports issued under the dispute-settlement rules of the Shipbuilding Agreement, which are virtually identical to the requirements in section 129 of the Uruguay Round Agreements Act with respect to administrative action following WTO dispute-settlement panel reports on antidumping and injury determinations.

The Committee intends that the procedural requirements of current law with respect to antidumping apply to shipbuilding investigations as well. Accordingly, antidumping procedural requirements under Title VII of the 1930 Act have been repeated in the new Title VIII, making only those changes necessitated by the differences between the WTO Antidumping Code and the Shipbuilding Agreement.

NEW SUBTITLE D—DEFINITIONS

Section 861. Definitions

Industry; Producer: The new paragraph 861(4) defines “industry” as the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a like vessel. A “producer” is defined as including an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel. “Capability to produce” is further defined as the capability of a producer to produce a domestic like vessel with its present facilities or ability to adapt its facilities in a timely manner.

By contrast, under Title VII of the 1930 Act, paragraph 771(4) defines “industry” as the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.

As discussed above with respect to the new section 802 of Title VIII, vessels are generally unique and made to individual specifications. Therefore, a domestic producer may not have produced a vessel like the subject vessel but could, nonetheless, still be injured by the sale because that producer was capable of producing such a vessel. Accordingly, the definition of “industry” and “producer” in the new Title VIII would not require that the party actually produce a like vessel in order to be considered a producer or part of the industry. This definition under the new Title VIII differs from Title VII the 1930 Act, which requires that the petitioner, if a producer, actually produce or manufacture the like product (except in the context of a determination whether the establishment

of a domestic industry is materially retarded by reason of subject imports).

Buyer; United States buyer: The new paragraph 801(a)(1) requires that a vessel be sold directly or indirectly to a U.S. buyer in order for an injurious-pricing investigation under Title VIII to be commenced. Paragraph 861(5) defines a "buyer" as any person who acquires an ownership interest in a vessel, including by lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly.

The new paragraph 861(6) defines "United States buyer" as a buyer that is a U.S. citizen, a juridical entity organized under the laws of the United States (or a political subdivision thereof), or another juridical entity owned or controlled by such a juridical entity or U.S. citizen. The term "own" is defined as having more than a 50 percent interest. The term "control" is defined as the actual ability to have substantial influence on corporate behavior, which is presumed to exist where there is at least a 25 percent interest.

Title VII of the 1930 Act does not contain a definition of buyer or purchaser because Title VII of the 1930 Act does not require that a sale of the subject merchandise be made to a U.S. entity for an antidumping investigation to be commenced. Instead, Title VII of the 1930 Act requires that the subject merchandise enter the United States for consumption.

Because ocean-going vessels are technically not imported or entered for consumption in the United States, however, the Shipbuilding Agreement and the new Title VIII would permit investigations to be commenced only when a vessel is sold directly or indirectly to a U.S. buyer.

Ownership interest: With respect to the definition of a "buyer" in paragraph 861(5), paragraph 861(7) defines the term "ownership interest" as including any contractual or proprietary interest allowing the beneficiary to take advantage of the operation of a vessel in a manner substantially comparable to an owner. Paragraph 861(5) automatically includes leases or bareboat charters as being ownership interests.

In an antidumping investigation under Title VII of 1930 Act, Commerce may determine that a lease is equivalent to a sale under paragraph 771(19) after considering the terms of the lease, commercial practice within the industry, the circumstances of the transaction, whether the product subject to the lease is integrated into the operations of the lessee or importer, whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

Vessel; Respondents subject to investigation: The new paragraph 861(8) defines "vessel" as a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or for performance of a specialized service (including icebreakers and dredgers) and a tug of 365 kilowatts or more, as long as it is produced in a Shipbuilding Agreement Party or in a country that is neither a Shipbuilding Agreement Party nor a member of the WTO. Accordingly, respondents in injurious-pricing investigations must be from countries that are parties to the Shipbuilding Agreement

or from countries that are neither parties to the Shipbuilding Agreement nor members of the WTO. Thus, if a producer is from a country that is a member of the WTO but is not a party to the Shipbuilding Agreement, the new Title VIII remedy may not be utilized.

By contrast, Title VII of the 1930 Act (paragraph 771(16)) provides that a respondent may be from any country, even if it is not a member of the WTO, as long as the product is imported or sold for importation into the United States. This distinction between Title VII of the 1930 Act and the new Title VIII arises out of concern that an injurious-pricing action against a WTO member that agreed to be bound only by the rules of the WTO but not the provisions of the Shipbuilding Agreement may be subject to challenge as being inconsistent with U.S. obligations under the WTO.

The new paragraph 861(8) also excludes from the definition of "vessel" and, thereby from the application of the injurious-pricing provisions in the Shipbuilding Agreement, certain fishing vessels, military vessels, military reserve vessels, and certain other vessels sold before the entry into force of the Shipbuilding Agreement. For purposes of the new Title VIII, this section also defines the terms "self-propelled seagoing vessel," and "military vessel." The definition of "military reserve vessel" was removed from this section since S. 1216 was reported by the Finance and Commerce Committees. As a result, any prior legislative history defining this term does not apply.

Like vessel: The new paragraph 861(9) defines a "like vessel" as a vessel of the same type, purpose, and approximate size as the subject vessel and possessing characteristics closely resembling those of the subject vessel. This definition of "like vessel" in the new Title VIII is analogous to the definition of "like product" in Title VII of the 1930 Act.

Under Title VII of the 1930 Act, paragraph 771(10) defines a "domestic like product" as a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation.

The Committee recognizes that ocean-going vessels are frequently built to unique specifications. Accordingly, the Committee intends that, under the appropriate circumstances, there may be some minor variation in size and equipment between like vessels.

Material injury: The new paragraph 861(16) defines "material injury" as harm that is not inconsequential, immaterial, or unimportant. In making its determination whether an industry in the United States is or has been materially injured by reason of the sale of the subject vessel, the new paragraph 861(16)(B) would require the ITC to consider the sale of the subject vessel, the effect of the sale of the subject vessel on prices in the United States for a domestic like vessel, and the impact of the sale of the subject vessel on domestic producers of a domestic like vessel, but only in the context of production operations in the United States. In addition, the ITC may consider such other economic factors as are relevant to the material-injury determination.

In considering the sale of the subject vessel for purposes of determining material injury, the new paragraph 861(16)(C)(i) would require the ITC to ascertain whether the sale, either in absolute

terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

In evaluating the effect of the sale of the subject vessel on prices, paragraph 861(16)(C)(ii) specifies that the ITC consider whether there has been significant underselling of the subject vessel as compared with the price of a domestic like vessel and whether the effect of the sale otherwise depresses or has depressed prices to a significant degree or prevents or has prevented price increases, which otherwise would have occurred, to a significant degree.

Finally, in evaluating the impact on the domestic industry, the new paragraph 861(16)(C)(iii) requires evaluation of all relevant economic factors having a bearing on the state of the U.S. industry, including actual and potential decline in output, sales (or offers for sale), market share, profits, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment; actual and potential negative effects on the existing development and production efforts of the domestic industry; and the magnitude of the injurious-pricing margin. All factors are to be evaluated within the context of the business cycle and conditions of competition that are distinctive to the domestic industry.

Paragraph 771(7)(B) of Title VII of the 1930 Act requires the ITC to consider the volume of subject imports in determining whether a domestic industry is materially injured by reason of such imports. The definitions of "material injury" and the requirements for determining material injury under the new Title VIII are analogous. Differences between the two titles are merely intended to account for the particular characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement.

Nonetheless, with respect to the consideration of volume in determining material injury under the new Title VIII, the Committee recognizes that, unlike antidumping cases, injurious-pricing proceedings will normally involve the sale of only one vessel. Therefore, it is the Committee's view that, depending upon the circumstances of a particular investigation, the sale of one vessel at an injurious price may be sufficient to satisfy the volume criterion under the new Title VIII, whereas, it would be an unusual case in which a single sale would be considered a significant volume under Title VII. In addition, the Committee intends consideration of the "sale" under Title VIII to include the number of sales, tonnage, and value represented by that sale or sales, as appropriate.

Moreover, as discussed above concerning section 801, Title VIII provides that there must be a demonstration that there is or has been material injury by reason of the sale of the vessel or vessels in question. Accordingly, the material-injury provision under Title VIII is drafted to permit consideration of whether the sale of the subject vessel has caused price depression or suppression.

Threat: The new paragraph 861(16)(E) specifies that in determining whether a U.S. industry is threatened with material injury by reason of the sale of the subject vessel, the ITC is to consider, among other relevant economic factors, any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of sub-

stantially increased sales of a foreign like vessel to U.S. buyers, taking into account the availability of other export markets to absorb any additional exports; whether the sale of a foreign like vessel or other factors indicate the likelihood of significant additional sales to U.S. buyers; whether the sale of the subject vessel or sale of a foreign like vessel by the foreign producer is at a price that is likely to have a significant depressing or suppressing effect on domestic prices, and is likely to increase demand for further sales; the potential for product shifting; the actual and potential negative effects on the existing development and production efforts of the domestic industry; and any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the sale of the subject vessel.

These criteria under the new Title VIII for determining threat of material injury in an injurious-pricing investigation are analogous to the criteria under paragraph 771(7)(F) in Title VII of the 1930 Act that the ITC is to consider in determining threat of material injury by reason of dumped imports. The only differences in the threat criteria between the two titles are intended to account for the particular characteristics of the shipbuilding industry and the requirements of the Shipbuilding Agreement. Therefore, except when necessary to account for these differences, the ITC should apply the threat criteria in Title VIII in the same manner as under Title VII of the 1930 Act.

The Committee notes, however, that although both Title VII of the 1930 Act and the new Title VIII make reference to “substantially increased sales” in the threat section, the increase in sales of a foreign like vessel or the increase in production capacity may, in appropriate circumstances, satisfy the Title VIII criterion even though such increase may not be sufficient in most cases in the context of a threat determination under Title VII of the 1930 Act. The ITC’s consideration of “sale” in determining threat of material injury under the new Title VIII includes the number of sales, tonnage, and value represented by that sale or sales. Because there may be no more than one sale in most instances, the ITC need not focus on evidence of increased past sales in determining the likelihood of future sales.

Cumulation: Under the new paragraph 861(16)(F), the ITC would be required, subject to certain exceptions, to assess cumulatively the effects of sales of foreign like vessels from all foreign producers. The new paragraph 861(16)(F) provides that the ITC must conduct a cumulative analysis with respect to petitions filed on the same day, investigations self-initiated on the same day, or petitions filed and investigations self-initiated on the same day, if the foreign producers of the subject vessels compete with each other and with producers of a domestic like vessel in the U.S. market.

These requirements regarding cumulative analysis by the ITC under the new Title VIII are analogous to the provisions in paragraph 771(7)(G) of Title VII of the 1930 Act with respect to a cumulative assessment by the ITC of the volume and effects of imports of subject merchandise from all foreign countries. Therefore, the rules regarding the types of investigations that must be cumulated under Title VII of the 1930 Act and the new Title VIII are intended to be the same.

The only difference between the two titles in final determinations in which the ITC performs a cumulative analysis concerns the use of the record compiled in the first investigation in which the ITC makes a final determination. In antidumping cases under Title VII of the 1930 Act, the ITC is generally required to use such a record. However, in injurious-pricing investigations under Title VIII, the ITC may, but would not be required to use this record. The reason for the difference is that some of the new Title VIII investigations may be delayed for long periods of time in order to obtain cost-of-production information, and use of the record in the first investigation may, therefore, not be appropriate for purposes of conducting a cumulative analysis.

Interested party: The new paragraph 861(17) defines "interested party" as the foreign producer, seller (other than the foreign producer), and the U.S. buyer of the subject vessel, or a trade or business association a majority of whose members are the foreign producer, seller, or U.S. buyer of the subject vessel; the government of the country in which the subject vessel is produced or manufactured; a producer that is a member of an industry; a certified union or recognized union or group of workers which is representative of an industry; a trade or business association a majority of whose members are producers in an industry; and an association a majority of whose members is composed of interested parties listed above.

Except to account for the particular characteristics of the shipbuilding industry, this definition of "interested party" is analogous to the definition of "interested party" under paragraph 771(9) in Title VII of the 1930 Act. However, the new paragraph 861(17)(G) would also permit a purchaser to be an interested party in countermeasure proceedings if, after the effective date of an order imposing countermeasures under the new section 807, the purchaser entered into a contract of sale with the foreign producer that is subject to the order. Giving such parties interested party status would permit them to participate in proceedings before Commerce to determine the scope and duration of countermeasures.

Section 5103. Enforcement of countermeasures

Section 5103 would amend Part II of Title IV of the Tariff Act of 1930 to provide the U.S. Customs Service with the authority to deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto vessels listed by Commerce as being subject to countermeasures. Subsection 5103(b) provides for certain limited exceptions to this rule.

Unlike the WTO Antidumping Agreement, the Shipbuilding Agreement, as reflected in this section, specifically provides for the imposition of countermeasures if the foreign shipyard in question does not pay the injurious-pricing charge assessed against it. The antidumping law permits the assessment of an antidumping duty on future entries of merchandise subject to an antidumping order; U.S. law does not permit the imposition of countermeasures in the dumping context.

Section 5104: Judicial review in injurious pricing and countermeasure proceedings

Section 5104 amends the Tariff Act of 1930 to add section 516B, which provides that interested parties may challenge Commerce and ITC final determinations before the Court of International Trade, with subsequent appeal to the U.S. Court of Appeals for the Federal Circuit. In such cases, the applicable standard of review is whether the determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." In addition, certain preliminary determinations and countermeasure determinations may be challenged. In these cases, the standard of review is whether the determination is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Section 516B is analogous to the judicial review procedures and standards of review provided for in section 516A of the Tariff Act of 1930 in antidumping and countervailing duty investigations under Title VII of the 1930 Act. Therefore, the Committee intends that section 516B provide essentially analogous opportunities for judicial review as under section 516A. The differences are intended to take into account the differences in the two types of investigations, especially the imposition of countermeasures and the absence of comparable administrative reviews and sunset reviews under Title VIII.

B. SUBTITLE B—OTHER PROVISIONS

Section 5201: Equipment and repair of vessels

Section 5201 amends section 466 of the Tariff Act of 1930, by adding a new subsection (i). The new subsection provides that the equipment supplied and repairs made in a Party to the Shipbuilding Agreement on U.S.-flagged vessels of a type covered under the Shipbuilding Agreement, as well as U.S.-flagged, integrated tug-barges or tug-barge combinations, are not subject to the 50-percent ad valorem duty imposed under subsection 466(a) of the Tariff Act of 1930 on the cost of such equipment and repair made in a foreign country on a U.S.-flagged vessel.

Section 5201 implements the provision in the Shipbuilding Agreement that prohibits the collection of duties on vessel repairs made in a Party to the Shipbuilding Agreement. Accordingly, U.S. law must be changed to eliminate the duty if the repairs to a U.S.-flagged vessel are made in a Shipbuilding Agreement Party. Although not specifically covered by the Shipbuilding Agreement, this section also applies to integrated tug-barges and tug-barge combinations (provided that the barge is of 100 gross tons or more and the tug is of 365 kilowatts or more) because they share many of the same characteristics as vessels covered by the Shipbuilding Agreement. However, the duty would remain in place if the repairs are made in a country that is not a Party to the Shipbuilding Agreement.

Section 5202. Effect of agreement with respect to private remedies

Section 5202 clarifies that no person other than the United States may assert any cause of action or defense under the Shipbuilding Agreement, or may challenge any action or inaction by the

United States, the District of Columbia, any State, U.S. territory, or U.S. possession on the grounds that it is inconsistent with the Agreement. The implementing legislation of other trade agreements, such as subsection 102(c) of the Uruguay Round Agreements Act (Public Law 103-465) and subsection 102(c) of the North American Free Trade Agreement Implementation Act (Public Law 103-182), have essentially identical provisions to limit private remedies under those trade agreements. The Committee intends that section 5202 provide the same limitations with respect to private remedies as in the Uruguay Round Agreements Act and the North American Free Trade Agreement Implementation Act.

Section 5203. Implementing regulations

Section 5203 authorizes relevant agencies to issue regulations, as may be necessary to ensure that the amendments made by this legislation implemented on the date that the Shipbuilding Agreement enters into force with respect to the United States.

The Committee intends that the relevant agencies take steps to ensure through regulation that the amendments made by this legislation are appropriately implemented upon entry into force. With respect to injurious pricing, the Committee expects that regulations would be modeled after regulations implementing Title VII of the 1930 Act wherever possible, making only those changes necessitated by the differences between existing law and the amendments made by this legislation.

Section 5204. Amendments to the Merchant Marine Act, 1936

Section 5204 makes several changes to the Merchant Marine Act, 1936, which fall within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation and are explained in Senate Report 105–154.

Section 5205. Applicability of title XI amendments

Section 5205 makes certain changes to Title XI of the Merchant Marine Act, 1936, which fall within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation and are explained in Senate Report 105–154.

Section 5206. Monitoring and enforcement

Section 5206 requires USTR to establish a program to monitor other Shipbuilding Agreement parties' compliance with the terms of the Shipbuilding Agreement, which should include the establishment of an inter-agency task force and consultations with U.S. embassies, industry, labor, and other interested parties. USTR is also required to submit an annual report to Congress on USTR's monitoring activities, the results of its consultations, and other parties' compliance with the Agreement. This section also provides that USTR should vigorously use the consultation procedures under the Shipbuilding Agreement if it receives information that a Shipbuilding Agreement Party is materially violating the Agreement in a manner that is detrimental to U.S. interests. If the matter is not otherwise resolved through consultation, USTR is directed to use the dispute settlement procedures provided for under the Shipbuilding Agreement to redress the situation.

Section 5207. Jones Act and related laws not affected

Section 5207 clarifies the relationship between the requirements of the Shipbuilding Agreement and the Merchant Marine Act, 1920 (46 App. U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App. U.S.C. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II of the Shipbuilding Agreement (referred to collectively as the "Jones Act"). This provision falls within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation and are explained in Senate Report 105–154.

Section 5208. Withdrawal from Shipbuilding Agreement

Subsection 5208(a) requires the President to give notice of withdrawal by the United States from the Shipbuilding Agreement (under Article 14 of that Agreement) as soon as practicable (normally within two to four weeks) after one or more Shipbuilding Agreement Parties accounting for a specified tonnage of new Shipbuilding Agreement vessel construction (which does not include vessel repair) gives notice of intention to withdraw. However, the President may not implement the United States' withdrawal from the Agreement under this subsection until such foreign parties have actually withdrawn from the Agreement. This subsection also provides that the President may terminate the notice of withdrawal if one or more of the Shipbuilding Agreement Parties terminates its (their) notice(s) of withdrawal and that any Parties still intending to withdraw account for less than the specified tonnage of new Shipbuilding Agreement vessel construction.

Subsection 5208(b) sets out procedures for withdrawal of congressional approval of the Shipbuilding Agreement when a Shipbuilding Agreement Party undertakes responsive measures pursuant to a determination under the Shipbuilding Agreement that the Jones Act has significantly undermined the balance of rights and obligations under the Agreement. Under these procedures, subsection 5208(b)(1) requires the President to notify the Senate Committees on Finance and Commerce, Science and Transportation, and the House Committees on Ways and Means and National Security upon notice by a Shipbuilding Agreement Party of intention to apply such responsive measures under paragraph 2.e of Annex II B of the Shipbuilding Agreement and the applicable date of such measures. The President should provide this notice to the committees as soon as practicable, normally within two to four weeks of the notice by the Shipbuilding Agreement Party.

The term "applicable date" is defined in subsection 5208(b)(5) as the date on which the responsive measures are first scheduled to be applied by the Shipbuilding Agreement Party. In some cases, the notification by the Shipbuilding Agreement Party of its intention to apply responsive measures will not specify the date those measures may first be applied. In these instances, USTR should make every effort to determine the applicable date of the responsive measures from the Shipbuilding Agreement Party. Once that date is determined, the President is to issue as soon as practicable, a second notification to the Senate Committees on Finance and Commerce, Science, and Transportation, and the House Committees on Ways and Means and National Security, informing the committees of the applicable date. If USTR is unable to ascertain the

applicable date, the President shall so inform the committees and the date of the President's first notification to the committees shall be deemed to be the applicable date of the responsive measures.

While the President should consult with the appropriate Congressional committees in the event that the OECD Parties Group authorizes one or more Shipbuilding Agreement Parties to undertake responsive measures pursuant to paragraph 2.e of Annex II B, such authorization alone does not require formal notification mandated by subsection 5208(b)(1). Rather, it is the intention of the Committee that the President issue the formal notification required by subsection 5208(b)(1) only after the OECD Parties Group has authorized the undertaking of responsive measures and a government entity of one or more Shipbuilding Agreement Parties has issued a notice of intention to apply such measures.

Subsection 5208(b)(2) provides that, as of the applicable date of the responsive measures, Congress may consider and adopt a joint resolution providing for withdrawal of Congressional approval of the Shipbuilding Agreement. Under subsections 5208(b) (3) and (4) such a resolution may be introduced by any Member at any time on or after the applicable date. Congress then has 90 legislative days from the applicable date to transmit the resolution to the President; the Senate Committee on Finance and the House Committee on Ways and Means have up to 45 of those days to report the resolution or they are automatically discharged. If the President then vetoes the resolution, each House has 15 legislative days to vote to override the veto. Under subsection (b)(4)(B)(ii), the resolution would be subject to the "fast track" rules of section 152 of the Trade Act of 1974.

Subsection 5208(b)(4)(B)(iv)(III) specifies that it would not be in order for Congress to consider a joint resolution or vote to override a Presidential veto of the joint resolution if the President notifies the appropriate Congressional committees that the decision to apply the relevant responsive measures has been withdrawn and the measures have not yet been applied. Furthermore, subsection 5208(b)(4)(C) states that it would not be in order for either the House of Representatives or the Senate to consider another joint resolution (other than a joint resolution received from the other House), if that House has already voted on a joint resolution for withdrawal from the Shipbuilding Agreement with respect to the same Presidential notification regarding the implementation of responsive measures.

Subsection 5208(c) provides procedures for the Senate Committee on Commerce, Science and Transportation and the House Committee on National Security to report an original bill on an expedited basis that would restore those provisions of the Merchant Marine Act of 1936, as amended, that are modified by section 5204 of this title, but would not be restored by subsection 5301(b) in the event that the United States withdraws from the Shipbuilding Agreement. Any changes authorized by such legislation would take effect on the date of the United States' withdrawal.

Section 5209. Expanding membership in the Shipbuilding Agreement

Section 5209 requires USTR to monitor the policies and practices of countries that are not parties to the Shipbuilding Agreement and to seek the accession of countries that have significant commercial shipbuilding and repair industries, including Australia, Brazil, India, the People's Republic of China, Poland, Romania, Singapore, the Russian Federation, and Ukraine. USTR is also required to provide Congress with an annual report on its efforts to expand membership in the Shipbuilding Agreement.

Section 5210. Protection of United States security interests

Section 5210 clarifies the relationship between the requirements of the Shipbuilding Agreement and the protection of U.S. security interests. This provision is within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation and is explained in Senate Report 105–154.

Section 5211. Definitions

Section 5211 defines various terms for purposes of this title.

The term "appropriate committees" refers to the Senate Committees on Finance and Commerce, Science, and Transportation and the House Committees on Ways and Means and National Security.

The terms "Shipbuilding Agreement," "Shipbuilding Agreement Party," "Shipbuilding Agreement vessels," and "Export Credit Understanding" have the same meanings as in subsections (h), (i), (j), and (k) of section 905 of the Merchant Marine Act, 1936 (as added by section 5204 of this title), respectively.

The term "GATT 1994" has the same meaning as in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

This section also defines the term "military vessel." The definition of "military reserve vessel" was removed from this section. As a result, any prior legislative history defining this term does not apply. Section 5210 of this title describes the process for defining "military reserve vessel" where appropriate.

C. SUBTITLE C—EFFECTIVE DATE

Section 5301. Effective date

Subsection 5301(a) provides that the amendments made by this title take effect on the date that the Shipbuilding Agreement enters into force with respect to the United States. It is the expectation of the Committee that the Shipbuilding Agreement is unlikely to enter into force with respect to the United States before January 1, 2001, when the current terms of the Title XI program under the Merchant Marine Act, 1936, expire with respect to Shipbuilding Agreement vessels.

Subsection 5301(b) also provides that if the United States withdraws from the Shipbuilding Agreement for any reason, this title and all changes to U.S. law made by this title would cease to have effect as of the date of the withdrawal. This provision also clarifies that any vessel deemed to be a privately-owned United States-flag vessel as a result of changes made by this legislation would con-

tinue to maintain that status for certain purposes of the Merchant Marine Act, 1936, after the date of the United States' withdrawal.

F. TITLE VI—MISCELLANEOUS TRADE AND TARIFF PROVISIONS

1. Subtitle A—Legislation to Extend Permanent Normal Trade Relations (NTR) Tariff Treatment to Imports from Mongolia

This subtitle authorizes the extension of permanent normal trade relations (NTR) tariff treatment to imports from Mongolia.

A. BACKGROUND

Mongolia's NTR status is currently governed by Title IV of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990 (Title IV of the 1974 Act). Section 402 of the 1974 Act (also known as the Jackson-Vanik amendment) sets forth requirements relating to freedom of emigration, which must be met or waived by the President in order for the President to grant nondiscriminatory, NTR status to nonmarket-economy countries. Title IV of the 1974 Act also requires that a trade agreement remain in force between the United States and a nonmarket-economy country receiving NTR status and sets forth minimum provisions which must be included in such agreement.

The United States and Mongolia concluded a trade agreement on January 23, 1991, which, among other things, provides for the protection of intellectual property and the promotion and facilitation of trade between the two countries. The United States and Mongolia also signed a bilateral investment treaty on October 6, 1994.

On January 23, 1991, the President issued a waiver of the Jackson-Vanik freedom-of-emigration requirements for Mongolia. On October 31, 1991, Congress passed a joint resolution (H.J. Res. 281) approving NTR for Mongolia, which the President signed on November 13, 1991 (P.L. 102–157). On September 4, 1996, the President determined that Mongolia was in full compliance with the freedom-of-emigration criteria listed in sections 402 and 409 of the 1974 Act. This finding allows for the continuation of NTR status for Mongolia without the requirement of a waiver, but requires the President to submit semiannual reports to Congress regarding Mongolia's continued compliance with the freedom-of-emigration requirements of Title IV of the 1974 Act. The most recent report was submitted to the Congress on July 1, 1998.

In his July 1998 report, the President noted that all current information indicates that the emigration laws and practices of Mongolia continue to satisfy the criteria of sections 402 and 409 of the 1974 Act. Specifically, Mongolia's "Law on Emigration and Private Trips of Mongolian Citizens Abroad" has been in effect since February 1, 1994. That law gives Mongolian citizens the right to move freely within the country, travel and emigrate, and return to Mongolia. The President further reported that these rights are exercised in fact, and that there are no outstanding emigration cases involving the United States and no divided family cases in Mongolia.

The President's report also noted that Mongolia continues to maintain a positive human rights record, that the Mongolian Constitution's protections for freedom of speech, press and expression

and for an independent judiciary are respected in practice, and that the country "continues to demonstrate the strength of its democracy."

Mongolia joined the World Trade Organization (WTO) on January 29, 1997. Because the conditional NTR afforded by Title IV of the 1974 Act is inconsistent with the obligation under WTO rules to give all WTO member countries unconditional NTR treatment, the United States invoked Article XIII of the Agreement Establishing the World Trade Organization, which allows the United States to withhold application of the WTO Agreements with respect to Mongolia. Non-application will continue for as long as Mongolia remains subject to Title IV of the 1974 Act.

B. GENERAL DESCRIPTION OF SUBTITLE

Section 6001. Congressional findings

Section 6001 of this subtitle sets forth seven congressional findings that support removing Mongolia from the requirements of Title IV of the 1974 Act and permanently extending nondiscriminatory, NTR status to the products of Mongolia:

1. Mongolia has received conditional NTR under Title IV of the 1974 Act since 1991 and has been found to be in full compliance with the requirements of Title IV of the 1974 Act;
2. Mongolia has made substantial progress in building a democratic political system and a free-market economic system;
3. Mongolia had its third election under its new constitution in 1996, which resulted in a peaceful transfer of governmental power;
4. Mongolia and the United States signed a bilateral trade agreement in 1991 and a bilateral investment treaty in 1994;
5. Mongolia has joined the WTO;
6. Mongolia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States; and
7. By extending unconditional NTR to Mongolia, the United States would be able to avail itself of all rights under the WTO with respect to that country.

Section 6002. Termination of application of Title IV of the Trade Act of 1974 to Mongolia

Section 6002 of this subtitle authorizes the President to determine that Title IV of the 1974 Act should no longer apply to Mongolia. After making such a determination, the President would have the authority to proclaim the permanent extension of unconditional NTR treatment to the products of Mongolia.

2. Subtitle B—Legislation Implementing Certain Miscellaneous Tariff Provisions

Subtitle B of Title VI implements a number of miscellaneous provisions relating to the duty treatment of certain fabrics; the temporary suspension of duties for the personal effects of participants in certain world athletic events; expansion of a production incentive program for U.S. insular possessions; the importation of gum ara-

bic; and the duty drawback rules relating to inputs used in the manufacture of certain mobile offshore drilling units.

A. BACKGROUND AND GENERAL DESCRIPTION OF SECTIONS

Section 6101. Duty treatment of certain fabrics

This section corrects a competitive imbalance in the tariff schedule that favors foreign production of wool suits at the expense of U.S. suit makers. Because of an inverted tariff, imports of wool fabric used to make wool suits are subject to a higher rate of duty (31.7 percent) than imports of the wool suits (which are subject to a compound rate of duty of 31.7 cents per kilogram plus 19.6 percent ad valorem, or the equivalent of 20.2 percent ad valorem, except for imports from Canada, which are duty-free, and imports from Mexico, which have a 3.4 percent duty, pursuant to HTS heading 6203.11.20).

Section 6101 corrects this tariff inversion by temporarily reducing or suspending, through December 31, 2004, the duties on certain imports of fine wool fabric used to make suits, suit-type jackets and trousers. Under this section, the duty is temporarily suspended on imports of wool fabric that are certified by the importer as "Super 90s" or higher grade. The duty on imports of wool fabric certified by the importer to be "Super 70s" or "Super 80s" grade fabric is reduced to 20.2 percent. In addition, if the President proclaims a staged rate reduction with respect to wool suit-type jackets, this section provides that corresponding changes would be made to the tariffs applicable to "Super 70s" and "Super 80s" wool fabric. The Committee has relied on the tariff for wool suit-type jackets as the benchmark because, at 20.2 percent, it is the simple ad valorem equivalent of the tariff on wool suits. The Committee notes that once the Uruguay Round tariff cuts have been phased in, the tariffs on wool suits and wool suit-type jackets will be the same—17.5 percent ad valorem.

Section 6102. Temporary duty suspension for personal effects of participants in certain world athletic events

Under current law, U.S. Customs Service inspectors have the discretion to allow certain articles, not intended for sale or distribution, to be brought into the United States in connection with international athletic events on a duty-free basis. Persons seeking such duty-free treatment are obliged, however, to comply with certain filing requirements which significantly lengthen the entry process. Section 6102 reduces the need for these paperwork requirements by providing temporary duty-free entry for the personal effects and athletic equipment of participants and others in certain international sporting events, while retaining the ability of Customs Service inspectors to inspect all imports, regardless of their duty status. This section does not allow products to come into the United States that would be barred under existing law, but will help make the customs process as smooth as possible for upcoming international athletic events, such as the 2002 Salt Lake City Winter Olympics.

Subsection 6102(a) adds HTS heading 9902.98.08 to temporarily suspend through December 31, 2003, the imposition of duties on

the personal effects of participants in, officials of, or accredited members of delegations to (and persons who are immediate family members of or servants to such persons) certain world athletic events, provided such items are not intended for sale or distribution to the public. These events are the 1999 International Special Olympics, the 1999 Women's World Cup Soccer, the 2001 International Special Olympics, the 2002 Salt Lake City Winter Olympics, and the 2002 Winter Paralympic Games. The suspension applies also to other articles, not intended for sale or distribution to the public, such as equipment and materials imported in connection with such events, as well as articles to be used in exhibitions depicting the culture of a country participating in any such event.

Subsection 6102(b) exempts from taxes and fees all articles described in subsection 6102(a). Subsection 6102(c) clarifies that the articles described in subsection 6102(a) shall not be free or otherwise exempt or excluded from routine or other inspections as may be required by the Customs Service. Subsection 6102(d) provides that this section applies to articles entered, or withdrawn from warehouse, for consumption on or after October 1, 1998.

The Committee on Finance expects that the Customs Service, and other relevant agencies, will cooperate with the organizing committees of the various athletic events described in this section, to facilitate the entry of the athletes, officials and other participants in such events. The practices and procedures developed during the Centennial Olympic Games in Atlanta, Georgia to facilitate the entry of goods covered under the statute, while preserving the traditional inspection authority of the United States Customs Service, have been cited as having been highly successful and effective. The Committee intends that subsection 6102(c) simply reaffirms the authority of the Customs Service to implement practices and procedures, such as those implemented for the Centennial Olympic Games, to facilitate the entry of persons for upcoming international athletic events.

Section 6103. Extension of U.S. insular possessions program

The United States has long recognized the importance of encouraging the economic development of U.S. insular possessions. Under current law, additional U.S. note 5 to chapter 91 of the HTS provides limited duty-free treatment with respect to certain watches and watch movements produced in insular possessions (i.e., Virgin Islands, Guam and Samoa) and duty refunds based on the amount of wages paid to produce such watches in the insular possessions. The note 5 program is intended to counteract the lack of natural resources and other competitive disadvantages of the insular possessions. In part because of this program, the watch manufacturing industry plays a significant role in the economies of the insular possessions, particularly the Virgin Islands where it provides high-skill, high-wage employment to approximately 200 workers.

Section 6103 makes certain articles of fine jewelry, specifically jewelry articles of silver, gold or platinum under HTS heading 7113, produced in insular possessions, eligible for certain note 5 benefits. In particular, subsection 6103(a) adds an additional U.S. note 3 to chapter 71 of the HTS. Paragraph (a) of the new note 3 permits the inclusion of wages paid for jewelry production in the

insular possessions as an offset to duties paid on watches, watch movements and parts imported into the United States, as currently authorized by additional U.S. note 5 to Chapter 91 of the HTS. Paragraph (b) of note 3 provides that the extension of note 5 benefits to jewelry may not result in any increase in the authorized amount of benefits established by note 5 and paragraph (c) of note 3 provides that this provision shall not diminish the benefits currently available to watch producers under paragraph (h)(iv) of Note 5 to chapter 91. Paragraph (d) requires the Secretary of Commerce and the Secretary of the Interior to issue regulations to carry out this provision. Recognizing that the establishment of full-scale jewelry production in the insular possessions will require a transition period, the Committee intends that the Secretaries will develop and administer their regulations in a manner that will promote jewelry production in the insular possessions.

Section 6104. Gum arabic

Gum arabic is a naturally occurring product that is exuded from the stems and branches of the acacia tree. This process can occur only in precise climatic conditions, such as those found in the Sudan. Gum arabic is the key ingredient in a variety of soft drinks, baking and confectionary items, dietary fiber products, pharmaceuticals and other industrial applications. In many of these products, there is no suitable alternative ingredient to the use of gum arabic.

On November 3, 1997, President Clinton issued Executive Order 13067 blocking all property and interests of the Government of Sudan that are in the United States and prohibiting U.S. commercial transactions with Sudan, including the importation into the United States of any goods of Sudanese origin, except to the extent that licenses are granted. At that time, President Clinton stated that, "we intend to license only those activities that serve U.S. interest," including "the importation of products unavailable from other sources, such as gum arabic." Since the issuance of the executive order, however, the Department of Treasury's Office of Foreign Assets Control has declined to grant licenses to U.S. manufacturers of gum arabic, beyond a one-time exemption for each company to meet its limited contractual obligations for 1998. This decision threatens the reliability of the supply of this product to thousands of U.S. companies, without having a negative effect on the government of Sudan

Section 6104 provides that, notwithstanding any other provision of law, Executive Order 13067 shall not apply to the importation into the United States on or before December 31, 2002, of gum arabic of Sudanese origin that is described in subheadings 1301.20.00 or 1301.90.90 of the HTS.

Section 6105. Mobile offshore drilling units

Section 6105 is intended to modify the treatment of U.S.-flagged and U.S.-owned mobile offshore drilling units for purposes of duty drawback under section 313 of the Tariff Act of 1930, as amended. Under current practice, the U.S. Customs Service relies principally on the documentation and ownership of a mobile offshore drilling unit in determining whether imported materials used in the con-

struction of such units qualify for duty drawback. This has created a disincentive to U.S. flagging of these units and, concomitantly, to the use of U.S. crewmen.

Section 6105 provides limited eligibility for duty drawback purposes designed to address those circumstances where a mobile offshore drilling unit is manufactured in the United States for use outside U.S. territorial waters for much of its useful life. Section 6105 provides that imported materials used in the construction or equipment of mobile offshore drilling units shall be eligible for duty drawback undersection313 of the Tariff Act of 1930 when the unit leaves the exclusive economic zone of the United States if it is destined for operation for one year or more in international waters or the exclusive economic zone of a foreign country. If the mobile offshore drilling unit reenters the exclusive economic zone of the United States for any purpose, section 6105 would treat such reentry into U.S. territorial waters as an entry for customs purposes and require the repayment of any duty drawback previously received.

Section 6105 clarifies further that it shall have no effect on existing customs entry procedures (including the use of Temporary Importation Bonds pursuant to subchapter XIII of Chapter 98 of the Harmonized Tariff Schedule of the United States; bonded warehouses pursuant to section 311 of the Tariff Act of 1930, as amended; or Foreign Trade Zones pursuant to the Foreign Trade Zones Act of 1934, as amended). Nor would section 6105 affect the current treatment of imported materials used in the construction or equipment of mobile offshore drilling units in any foreign trade zone. In addition, section 6105 makes clear that it shall have no effect whatsoever on the treatment of antidumping or countervailing duties imposed under Title VII of Tariff Act of 1930, as amended, which, pursuant to section 779 of the Tariff Act of 1930, are not eligible for duty drawback.

G. TITLE VII—LEGISLATION IMPLEMENTING REVENUE PROVISIONS

Section 7001. Expansion of Definition of Vessels Qualified for Capital Construction Fund Treatment

Background

Under section 7518 of the Internal Revenue Code (the "Code"), in determining taxable income for regular tax purposes, a qualified taxpayer who owns or leases a qualified vessel (an "agreement vessel") is allowed a deduction for certain amounts contributed to a fund established under section 607 of the Merchant Marine Act, 1936 (a "capital construction fund"). In addition, the investment earnings on amounts contributed to a capital construction fund are excluded from gross income for regular tax purposes.

If a withdrawal from a capital construction fund is used to acquire, construct, or reconstruct a qualified vessel, the amount withdrawn generally is not included in gross income and the basis of the qualified vessel generally is reduced by the amount withdrawn to the extent attributable to amounts previously deducted or excluded from income. In the case of any other withdrawal from a capital construction fund, the amount withdrawn generally is included in gross income to the extent attributable to amounts pre-

viously deducted or excluded from income and interest on the tax liability attributable to such inclusion generally must be paid from the date of the deduction or exclusion.

Any term (including the definition of "agreement vessel") provided in section 607(k) of the Merchant Marine Act, 1936, as in effect as of the date of enactment of the Tax Reform Act of 1986, applies for purposes of section 7518. Under section 607(k) of the Merchant Marine Act, 1936, as in effect as of the date of enactment of the Tax Reform Act of 1986, an agreement vessel generally is a vessel constructed or reconstructed in the United States (the "U.S.-build requirement") and documented under the laws of the United States (the "U.S.-flag requirement'). In addition, the person maintaining the capital construction fund must agree with the Secretary (of Commerce or Transportation) that the vessel will be operated in the United States foreign trade, Great Lakes trade, or noncontiguous domestic trade or in the fisheries of the United States.

Under present law, in order for a vessel to qualify for the tax benefits provided through capital construction funds, the vessel must meet certain requirements described in the Merchant Marine Act, 1936, as in effect as of the date of enactment of the Tax Reform Act of 1986. Among these requirements is that the vessel must have been constructed or reconstructed in the United States. This requirement conflicts with a goal of the OECD shipbuilding trade agreement, which seeks to minimize or eliminate shipbuilding subsidies among the signatory nations. Thus, the Committee amends the Code in order to conform to the definition of "agreement vessel" as provided by Title V of this legislation.

General description of section

For purposes of section 7518 of the Code, the terms "eligible vessel" and "qualified vessel" shall have the same meaning as provided in section 607(k) of the Merchant Marine Act, 1936, as amended by Title V of this legislation. Thus, in general, for purposes of the tax benefits provided by capital construction funds, an agreement vessel will include any vessel constructed or reconstructed in any nation that is a Party to the OECD Shipbuilding Agreement entered into on December 21, 1994.

The provision is effective as of the date that the Shipbuilding Agreement enters into force with respect to the United States.

Section 7002. Modification to foreign tax credit carryback and carryover periods

Background

U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. Separate foreign tax credit limitations are applied to specific categories of income.

The amount of creditable taxes paid or accrued (or deemed paid) in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back two years and forward five years. The amount carried over may be used as a credit in a carryover

year to the extent the taxpayer otherwise has excess foreign tax credit limitation for such year. The separate foreign tax credit limitations apply for purposes of the carryover rules.

The Committee believes that reducing the carryback period for foreign tax credits to one year and increasing the carryforward period to seven years will reduce some of the complexity associated with carrybacks while continuing to address the timing differences between U.S. and foreign tax rules.

General description of section

This section reduces the carryback period for excess foreign tax credits from two years to one year. This section also extends the excess foreign tax credit carryforward period from five years to seven years. This provision applies to foreign tax credits arising in taxable years beginning after December 31, 1998.

IV. CONGRESSIONAL ACTION

The Committee considered the legislation in the form of an original bill on July 21, 1998, and ordered it reported favorably on the basis of a recorded vote. Title I, Subtitle C was, apart from minor amendments, previously reported favorably by the Committee as an original bill, S. 1278. Titles II and III were, apart from minor amendments, previously reported favorably by the Committee as an original bill, S. 1269. Title V, apart from minor amendments, was previously reported favorably by both the Finance and Commerce Committees as an original bill, S. 1216. Title VI, Subtitle A, without amendment, was previously reported favorably by the Committee as S. 343.

V. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of Rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the roll call votes in the Committee's consideration of the Trade and Tariff Act of 1998.

A. Motion to Report the Bill

The Trade and Tariff Act of 1998 was ordered favorably reported by a roll call vote of 11 yeas and 1 nay on July 21, 1998. The vote, with a quorum present, was as follows (proxy votes are not counted in the total vote on a motion to order a bill reported):

Yeas.—Senators Roth, Chafee, Grassley, Hatch (proxy), D'Amato (proxy), Murkowski (proxy), Nickles (proxy), Gramm, Lott, Jeffords, Mack (proxy), Moynihan, Baucus, Rockefeller, Breaux, Graham (proxy), Bryan, and Kerrey (proxy).

Nays.—Conrad and Moseley-Braun (proxy).

B. Votes on Amendments

(1) An amendment by Senator Conrad to add to Title II a negotiating objective that trade agreements should include mechanisms for their renegotiation in the event that provisions in the agreement yield substantially worse results than anticipated failed by a vote of 6 yeas and 14 nays.

Yeas.—Senators Grassley, Moynihan, Baucus (proxy), Conrad, Bryan, and Kerrey (proxy).

Nays.—Senators Roth, Chafee, Hatch, D'Amato, Murkowski, Nickles (proxy), Gramm, Lott (proxy), Jeffords, Mack (proxy), Rockefeller, Breaux, Graham (proxy), and Moseley-Braun (proxy).

(2) An amendment by Senators Chafee and Hatch to strike Subtitle B of Title VI relating to the tariffs imposed on certain wool fabric and redirect the savings to the further extension of the Trade Adjustment Assistance program failed by a vote of 5 yeas and 15 nays.

Yeas.—Senators Chafee, Grassley, Hatch, Lott (proxy), and Baucus.

Nays.—Senators Roth, D'Amato, Murkowski (proxy), Nickles (proxy), Gramm, Jeffords, Mack (proxy), Moynihan, Rockefeller, Breaux, Conrad, Graham (proxy), Moseley-Braun (proxy), Bryan, and Kerrey (proxy).

(3) An amendment by Senator Conrad to Title II to require the President to submit to the Congress certain assurances relating to the currency values of countries with which trade agreements are negotiated was defeated by a vote of four yeas and 16 nays.

Yeas.—Senators Moynihan, Conrad, Bryan, and Kerrey (proxy).

Nays.—Senators Roth, Chafee, Grassley, Hatch (proxy), D'Amato (proxy), Murkowski (proxy), Nickles (proxy), Gramm, Lott, Jeffords, Mack (proxy), Baucus, Rockefeller, Breaux (proxy), Graham (proxy), and Moseley-Braun (proxy).

VI. BUDGETARY IMPACT

A. Committee Estimates

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

ESTIMATED BUDGET EFFECTS OF TRADE AND REVENUE PROVISIONS OF THE ''TRADE AND TARIFF ACT OF 1998,'' AS APPROVED BY THE SENATE COMMITTEE ON FINANCE ON JULY 21, 1998; FISCAL YEARS 1999–2007

[In millions of dollars]

Provision	Effective	1999	2000	2001	2002	2003	2004	2005	2006	2007	1999–02	2003–07	1999–07
1. Trade Provisions: [1]													
a. African Growth and Opportunity Act		−15	−21	−47	−57	−60	−63	−67	−70	−74	−140	−334	−474
b. Generalized System of Preferences Extension		−393	−333	−88	....	....	....	....	....	....	−814	....	−814
c. Caribbean Basin Parity Initiative		−98	−138	−147	−26	....	....	....	....	....	−409	....	−409
d. Trade Adjustment Assistance		−34	−43	−17	−3	....	....	....	....	....	−97	....	−97
e. OECD Shipbuilding Agreement		....	....	−5	−7	−7	−7	−7	−7	−7	−12	−35	−47
f. Normal Trade Relations for Mongolia		....	....	....	....	....	....	....	....	....	....	....	....
g. Wool Tariff Correction		−13	−14	−14	−15	−17	−18	−5	....	....	−56	−40	−96
h. Mobile Offshore Drilling Units		....	−1	−1	−1	−1	−1	−1	−1	−1	−3	−5	−8
Subtotal of Trade Provisions		−553	−550	−319	−109	−85	−89	−80	−78	−82	−1,531	−414	−1,945
2. Revenue Provisions:													
a. Expand the Definition of Vessels Qualified for Capital Construction Fund Treatment.	([2])	....	....	([3])	−1	−2	−3	−3	−3	−3	−1	−14	−15
b. Modify Foreign Tax Credit Carryback and Carryforward Rules.	ftpoai tyba 12/31/98	84	546	487	454	424	394	271	267	263	1,571	1,619	3,190
Subtotal of Revenue Provisions		84	546	487	453	422	391	268	264	260	1,570	1,605	3,175
Net total		−469	−4	168	344	337	302	188	186	178	39	1,191	1,230

[1] Estimates provided by the Congressional Budget Office.
[2] Effective as of the date that the OECD Shipbuilding Trade Agreement Act enters into force with respect to the United States.
[3] Loss of less than $500,000.

Source: Joint Committee on Taxation.
Note: Details may not add to totals due to rounding.

Legend for ''Effective'' column: ftpoai = foreign taxes paid or accrued in; tyba = taxable years beginning after.

B. Budget Authority and Tax Expenditures

1. BUDGET AUTHORITY

In accordance with subsection 308(a)(1) of the Budget Act the Committee states that the Trade and Tariff Act of 1998 involves new budget authority of $97 million over the 1999–2002 period to cover the outlays under the NAFTA Trade Adjustment Assistance program.

2. TAX EXPENDITURES

In accordance with subsection 308(a)(2) of the Budget Act, the Committee state that the provisions of the Trade and Tariff Act of 1998 will result in increased tax expenditures of $15 million over the period fiscal years 1999–2007.

C. Consultation With Congressional Budget Office

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has submitted the following statement on the budgetary impact of the Trade and Tariff Act of 1998:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 31, 1998.

Hon. William V. Roth, Jr.
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for the Trade and Tariff Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Hester Grippando.

Sincerely,

James L. Blum
(For June E. O'Neill, *Director*).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Trade and Tariff Act of 1988

Summary: The Trade and Tariff Act of 1998 is an omnibus trade bill that would temporarily grant or renew duty reductions and change the carryback and carryforward rules on foreign tax credits. The Congressional Budget Office (CBO), along with the Joint Committee on Taxation (JCT), estimates that this bill would increase receipts by $472 million over the 1999–2003 period and by $1,326 million over the 1999–2007 period. In addition, CBO estimates that the bill would increase spending by $97 million over the 1999–2002 period.

The Trade and Tariff Act of 1998 contains no intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA), and would impose no costs on state, local, or tribal governments. The change in the foreign tax credit rules would impose

a private-sector mandate with costs that would exceed the annual threshold specified in UMRA ($100 million in 1996, adjusted for inflation).

Description of major provisions: The Trade and Tariff Act of 1998 would make several changes in current trade law. Specifically the bill would:

Grant special duty-free tariff treatment to specified goods from eligible, developing countries in sub-Sahara Africa;

Renew the currently expired General System of Preferences (GSP) program, which offers duty-free tariff treatment on specified goods from approximately 140 eligible developing countries;

Offer specified products of Caribbean Basin partnership countries tariff and quota treatment similar to that accorded to products under the North American Free Trade Agreement (NAFTA);

Re-authorize Trade Adjustment Assistance programs;

Implement the Organization for Economic Cooperation and Development (OECD) Shipbuilding Trade Agreement;

Change the tariff classification on wool;

Change the drawback procedure on mobile offshore drilling units;

And change the carryback and carryforward rules on foreign tax credits.

Estimated cost to the Federal Government: The estimated budgetary impact of the Trade and Tariff Act of 1998 is shown in the following table. The costs of this legislation fall within budget functions 450 (Community and Regional Development), 500 (Education, Employment, and Social Services), and 600 (Income Security). The legislation would also affect revenues.

TABLE 1. ESTIMATED BUDGETARY IMPACT OF THE TRADE AND TARIFF ACT OF 1998

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
CHANGES IN REVENUES						
Estimated revenues	0	−436	39	185	347	337
DIRECT SPENDING						
Baseline spending under current law:						
Estimated budget authority	325	307	311	318	324	332
Estimated outlays	317	315	314	318	324	332
Proposed changes:						
Estimated budget authority	0	44	47	6	0	0
Estimated outlays	0	34	43	17	3	0
Baseline spending under the bill:						
Estimated budget authority	325	351	358	324	324	332
Estimated outlays	317	349	357	335	327	332
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Budget authority [1]	10	0	0	0	0	0
Estimated outlays	9	9	6	5	2	0
Proposed changes:						
Authorization level	0	10	10	0	0	0
Estimated outlays	0	([2])	3	4	5	5
Spending under the bill:						
Authorization level [1]	10	10	10	0	0	0

TABLE 1. ESTIMATED BUDGETARY IMPACT OF THE TRADE AND TARIFF ACT OF 1998—Continued

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
Estimated outlays	9	9	9	9	7	5

[1] The 1998 level is the amount appropriated for that year.
[2] Less than $500,000.

Basis of estimate: CBO assumes that this bill will be enacted by October 1, 1998, and that the necessary sums will be appropriated by the beginning of each fiscal year.

Revenues: The major provisions in the Trade and Tariff Act that would affect receipts are summarized in Table 2.

TABLE 2. ESTIMATED CHANGES TO REVENUES

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
African Growth and Opportunity Act[1]	0	−15	−21	−47	−57	−60
Extension of the Generalized System of Preferences	0	−393	−333	−88	0	0
United States-Caribbean Basin Trade Enhancement Act	0	−98	−138	−147	−26	0
OECD Shipbuilding Agreement	0	0	0	−5	−7	−7
Wool Tariff Correction	0	−13	−14	−14	−15	−17
Mobile Offshore Drilling Units	0	−1	−1	−1	−1	−1
Capital Construction Fund[2]	0	0	0	0	(3)	−1
Modify Foreign Tax Credit Carryback and Carryforward Rules[2]	0	84	546	487	454	424
Total	0	−436	39	185	347	337

[1] The extension of the GSP program for sub-Saharan Africa through June 30, 2008, beyond its December 31, 2000, termination for other beneficiary countries, appears under Subtitle B, section 1101 (b) of Title I in the legislation, but is shown here with the other effects of Subtitle A of Title I.
[2] Estimate provided by the Joint Committee on Taxation.
[3] Amount less than $500,000.

African Growth and Opportunity Act. Subtitle A of Title I would grant sub-Saharan African countries that are eligible as beneficiary developing countries under the United States Generalized System of Preferences (GSP) additional benefits under the program. The bill would amend GSP as related to sub-Saharan African countries to lessen the rule of origin and competitive need limitation requirements. The provision also would authorize the President to grant duty-free and quota-free treatment for many products that are currently excluded from GSP, if the International Trade Commission (ITC) determines that they are not import-sensitive in the context of imports from the region. In addition, certain textile and apparel products would be granted duty-free and quota-free tariff treatment. Subtitle A, section 1101(b) of Title I would extend the GSP program to beneficiary developing countries in sub-Saharan Africa through June 30, 2008. CBO estimates that these provisions would reduce receipts by $200 million over the 1999–2003 period, net of payroll and income tax offsets. The estimated loss is based on historical collections and the assumption that reducing tariffs and quotas on the affected products would increase the demand for them in the United States. This estimate assumes that some products that have been considered import-sensitive by ITC in the past would remain ineligible for GSP under the bill. The expansion of products from sub-Saharan Africa eligible for GSP would be effective January 1, 1999, and the GSP and textile provisions would expire on June 30, 2008.

Renewal of the Generalized System of Preferences. Subtitle B of Title I would renew the United States GSP program for approximately two years. GSP affords nonreciprocal tariff preferences to approximately 140 developing countries to aid their economic development and to diversify and expand their production and exports. Several industrial countries also offer similar preferences. Generally, duty-free treatment of imported goods from GSP-designated developing countries is extended to products that are not competitive internationally. Also, the program contains safeguards to protect domestic industries that are sensitive to import competition. GSP expired on June 30, 1998. Subtitle B would renew GSP from October 1, 1998, through December 31, 2000. In addition taxpayers could apply for refunds for the period between July 1, 1998, and September 1, 1998, but no refunds could be paid out before October 1, 1998. CBO estimates that renewing GSP would cost $814 million over the 1999–2003 period, net of payroll and income tax offsets. This estimate is based on projections of total United States imports and historical data on collections from beneficiary countries under the GSP program.

United States-Caribbean Trade Enhancement Act. Subtitle C of Title I would provide tariff and quota treatment similar to that accorded to products under the North American Free Trade Agreement to products of Caribbean Basin partnership countries. Under current law, the United States offers duty-free treatment to a wide range of products of 24 countries in the Caribbean region through the Caribbean Basin Initiative trade program (CBI). The CBI excludes the following products from such treatment: textile and apparel articles, luggage and handbags, certain leather goods, footwear, tuna, petroleum, watches, and watch parts. This bill would extend immediate duty-free and quota-free treatment to certain textile and apparel articles. The remaining products covered under Subtitle B would receive an immediate tariff reduction equal to half of the difference between the duty rate that Mexican products receive under NAFTA and the duty rate on imports of the same articles from CBI beneficiaries. NAFTA parity would begin on January 1, 1999, and would terminate on December 31, 2001. CBO estimates that Subtitle C would decrease revenues by $409 million over the 1999–2003 period, net of payroll and income tax offsets. This estimate is based on projections of total United States imports, historical data on collections from Caribbean Basin partnership countries, and the assumption of an increase in demand for the affected products in the United States.

OECD Shipbuilding Agreement Act. Title V would implement the OECD Shipbuilding Agreement, an international agreement that was signed by the United States on December 21, 1994. Under current law (19 U.S.C. 1466), United States flag vessels are subject to a 50 percent ad valorem duty on the cost of equipment and nonemergency repairs obtained in foreign countries. As mandated by the OECD agreement, Subtitle B of Title V of the proposed legislation would partially repeal the duty by exempting repairs to United States flag vessels done in OECD signatory countries. Based on information from the United States Trade Representative, this estimate assumes that this provision will be effective on January 1, 2001. BCO estimates that Subtitle B of the bill, pertaining to ves-

sel repair duties, would decrease governmental receipts by $19 million over the fiscal years 1999–2003, net of payroll and income tax offsets. This estimate assumes that, as a result of this bill, additional repairs to United States vessels would be made in ports in OECD countries. It also reflects an estimate of the United States Maritime Administration of a steady decline in the size of the United States fleet. In addition, section 5103, in Subtitle A of Title V, would impose a fine of $10,000 on the master of any vessel who submits false information in requesting a permit to lade and unlade, or who attempts to, or actually does, lade and unlade in violation of a denial of such a permit. CBO estimates that this additional penalty would not have a significant impact on governmental receipts.

Wool Tariff Correction. Section 6101, in Subtitle B of Title VI, would amend the Harmonized Tariff System (HTS) to change the classification of certain wool products intended for making suits and would temporarily eliminate or decrease duties paid on some such products. CBO estimates that this provision would reduce revenues by $73 million over the 1999–2003 period, net of payroll and income tax offsets. This measure would take effect on October 1, 1998, and would terminate on December 31, 2004.

Mobile Offshore Drilling Units. Section 6105, in Subtitle B of title VI, would amend section 313 of the Tariff Act of 1930 by providing for drawbacks for mobile offshore drilling units if such units are to be operated in international waters in the exclusive foreign economic zone for a period of one year or more. If such units were ever to return to the exclusive economic zone of the United States, any drawbacks previously granted would have to be repaid. CBO estimates that this provision would reduce governmental receipts by $4 million over the 1999–2003 period, net of payroll and income tax offsets. This provision would take effect on October 1, 1998.

Capital Construction Fund. Section 7001 of Title VII would expand the eligibility requirement for the Capital Construction Fund by permitting repairs and construction of vessels in the OECD Shipbuilding Agreement to be undertaken overseas. JCT estimates that this provision would decrease governmental receipts by about $2 million over the 1999–2003 period.

Modification to Foreign Tax Carryback and Carryover Provisions. Section 7002 of Title VII would reduce the period that excess foreign tax credits can be carried back from the current two years to one, but would increase the time that excess credits can be carried forward from five to seven years. JCT estimates that this provision would increase revenues by about $2.0 billion over the 1999–2003 period.

Other Provisions. Title II would restore the special authority to the President of the United States to enter into multilateral and bilateral trade agreements. Under this bill, the President could reduce certain tariffs by proclamation within specified bounds prescribed by the law. For provisions subject to Congressional approval, the Congress could not amend implementing legislation once it was introduced. Furthermore, as long as the President met statutory requirements concerning Congressional consultation during the negotiation process, the Congress would be required to act on the legislation following a strict timetable. CBO estimates that

this provision would have no direct effect on revenues, because future trade agreements would require implementing legislation. The effect of any changes implemented by the President would be attributed to the legislation implementing the agreement.

Subtitle A of Title VI would extend Normal Trade Relations to Mongolia on a permanent basis. Mongolia has received Normal Trade Relations treatment since 1991 on a conditional basis. The CBO baseline revenue projects assume that Normal Trade Relations status for Mongolia will be extended on an annual basis. Therefore, enacting Title VI would have no budgetary impact when measured relative to the CBO baseline.

Section 6102, in Subtitle B of Title VI, would temporarily suspend the duties on personal effects of individuals associated with the 1999 International Special Olympics, the 1999 Women's World Cup Soccer competition, the 2001 International Special Olympics, the 2002 Salt Lake City Winter Olympics, and the 2002 Winter Paralympic Games. CBO estimates that this provision would have no significant impact on governmental receipts. Without this legislation, many of the subjected goods would enter informally and without bond. Personal goods would be admitted free of duty under personal exemptions. Other goods destined for export would enter free of duty under bond. Also, many educational and cultural goods already enter free of duty under various international agreements. As a result, this provision would not significantly affect governmental receipts. This measure would take effect fifteen days after the date of enactment of this bill and terminate on January 1, 2003.

Section 6103, in Subtitle B of Title VI, would amend the HTS of the United States to extend to certain fine jewelry that is the product of the Virgin Islands, Guam, and American Samoa some trade benefits currently extended to watch producers in insular possessions of the United States. Since 1983, watch producers in the insular possessions have been able to import into U.S. customs territory a specified quantity of watches and watch parts free of duty and to claim duty refunds, by means of a formula that takes into account wages paid to insular possession workers. This provision would amend chapter 71 of the HTS by allowing fine jewelry producers in the Virgin Islands, Guam, and American Samoa to share the benefits that have been granted to watch producers. The bill would not increase or decrease benefits already in effect or alter quantitative limits on imports. Watch producers would not experience a reduction in their benefits. CBO estimates that this proposal would not have a significant impact on governmental receipts because producers of fine jewelry would be taking advantage of the unused certificates and the unfilled import quantities made available after watch producers had made use of the benefits available to them.

Section 6104, in Subtitle B of Title VI, would exclude gum arabic of Sudanese origin from Executive Order 13067. CBO estimates that this provision would not have a significant impact on governmental receipts.

Direct spending: The Trade Adjustment Assistance (TAA) program for workers provides transitional adjustment assistance for workers who are dislocated as a result of federal policies that re-

duce barriers to foreign trade. The program has two components—one for all workers and one for workers dislocated because of the implementation of the North American Free Trade Agreement (NAFTA). Spending for assistance to workers is considered mandatory, and thus the outlays are direct spending. Together, the two TAA programs for workers are estimated to have outlays of $317 million for fiscal year 1998. The bill would extend these programs through fiscal year 2000, and CBO expects that they will cost, in total, in the vicinity of $350 million a year. The direct spending costs of extending the main TAA program are included in the baseline, as required by the Balanced Budget and Emergency Deficit Control Act of 1985. However, the costs of extending the NAFTA portion of TAA are not included in the baseline. CBO estimates that extending the NAFTA TAA program would cost $97 million over the 1999–2002 period.

Spending subject to appropriations: The bill would authorize the application of such sums as necessary for Trade Adjustment Assistance for firms in each of fiscal years 1999 and 2000. CBO estimates that this provision would result in outlays of about $17 million over the 1999–2003 period, assuming appropriation of the necessary amounts. This estimate assumes that the amount appropriated each year under this authorization would be about $9.5 million, the amount provided in 1998. Outlays are estimated based on historical spending rates for the Economic Development Administration.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing such procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

TABLE 3. EFFECTS ON DIRECT SPENDING AND RECEIPTS

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	34	43	17	3	0	0	0	0	0	0
Changes in receipts	0	−436	39	185	347	337	302	188	186	178	([1])

[1] Not available.

Private-sector mandates: The provision in the Trade and Tariff Act of 1998 that would modify the foreign tax credit carryback and carryforward rules would impose a private-sector mandate. The direct costs of the mandate would exceed the statutory threshold established in the Unfunded Mandates Reform Act of 1995 in fiscal years 2000 through 2003. The costs to the private sector are summarized in Table 4.

TABLE 4. ESTIMATED COST OF MANDATES ON THE PRIVATE SECTOR

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
Cost to the Private Sector	0	84	546	487	454	424

Intergovernmental mandates: The Trade and Tariff Act of 1998 contains no intergovernmental mandates, as defined in the Unfunded Mandates Reform Act, and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal revenues: Hester Grippando. Federal costs: Christi Hawley-Sadoti and Gary Brown; Impact on State, local, and tribal governments: Pepper Santalucia; Impact on the private sector: Lesley Frymier.

Estimate approved by: Frank Sammartino, Assistant Director for Tax Analysis (Acting); Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

VII. REGULATORY IMPACT AND UNFUNDED MANDATES

A. Regulatory Impact

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of the Trade and Tariff Act of 1998.

1. Impact on Regulations

Title I provides for certain tariff preferences on imported merchandise. Since all imports must now comply with customs entry procedures and the reduction in tariff levels does not alter those entry requirements, Title I will impose no additional paperwork requirements on individuals or businesses.

Title II involves a delegation of authority to the President to proclaim certain changes in tariff rates resulting from the negotiation of reciprocal trade agreements. Title II also renews congressional procedures for the implementation of any changes in United States law necessitated by such reciprocal trade agreements. Because Title II relates to actions by the President or Congress, it involves no new paperwork or regulatory burdens affecting individuals or businesses.

Title III reauthorizes certain trade adjustment assistance programs. Title III does not alter any of the substantive or procedural requirements of those programs and would not, as a consequence, involve any new paperwork or regulatory burdens on individuals.

Title IV requires the United States Trade Representative to identify significant barriers to United States agricultural exports and, potentially, to investigate those barriers under section 302 of the Trade Act of 1974. Because Title IV affects actions by the USTR, rather than any private parties, Title IV would not impose any additional paperwork or regulatory burdens on individuals or businesses.

Title V approves and implements in United States law the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry negotiated under the auspices of the Organization for Economic Cooperation and Development. The approval of the Agreement by Congress entails no additional paperwork or regulatory burdens for individuals or businesses.

Among the changes it makes in United States law, Title V would exempt certain repairs made in Parties to the Agreement from duties otherwise applied to the value of foreign vessel repairs when a United States-flagged vessel returns to the United States. It would, in addition, modify certain tax and subsidy programs available under the Merchant Marine Act, 1936, to vessels constructed in the United States in order to conform to the obligations accepted by the United States under the Agreement. Neither the exemption from duty of foreign vessel repairs nor the modification of certain Merchant Marine Act tax and subsidy programs involves any additional paperwork or regulatory burdens on individuals or businesses.

Title V also creates a new trade procedure under which United States petitioners might challenge entry of vessels from other Parties on the ground that they benefit from subsidies in contravention of the Agreement. Given that the provisions of Title V provide a process for use at the discretion of the United States petitioning party, it mandates no additional paperwork or regulatory burden as such. The petitioning process (i.e., the process of challenging entry of vessels and requesting relief) would involve the filing of a petition and supporting documentary evidence by individuals or businesses with standing to request such relief.

Title VI normalizes trade relations with Mongolia and makes various modifications to the tariff laws of the United States. Providing for permanent normal trade relations with Mongolia does not alter either the dutiable status of Mongolian products imported into the United States or the paperwork needed to be filed to make entry of such products into the customs territory of the United States. It would not, as a consequence, result in any additional paperwork or regulatory burden on either individuals or businesses.

Of the changes Title VI makes to the United States tariff laws, the suspension of tariffs on wool fabric and articles entered for the personal use of athletes and trainers attending world sporting events in the United States would involve no additional paperwork or regulatory burden for individuals or businesses because suspension of the tariffs would not modify the paperwork or regulatory burdens otherwise imposed on the entry of imported merchandise under the customs laws of the United States.

Title VI modifies the production incentive program provided for certain imports from United States insular possessions. It is a voluntary program available to those individuals or businesses that choose to avail themselves of the benefits of the program. As such, those changes to the production incentive program do not mandate additional paperwork or regulatory burdens. Because it involves an expansion of benefits that require the filing of production incentive certificates and the accounting burdens associated with compliance with the program, the changes would entail additional paperwork for those choosing to avail themselves of the program.

Title VI would also lift the current embargo imposed under executive order by the President on imports of gum arabic from Sudan. Rather than imposing additional paperwork or regulatory burdens on individuals or businesses, the effect of the change would be to lift current import licensing requirements applicable to such imports that were imposed under the executive order.

The same would hold true for the Title VI provisions affording duty drawback to imported materials used in the construction or equipment of mobile offshore drilling units. Drawback itself is a voluntary program; its expansion to cover certain mobile offshore drilling units would impose no additional paperwork or regulatory burdens on individuals or businesses except for those individuals or businesses that choose to avail themselves of the program based on the changes made by Title VI. Title VI makes no changes to the paperwork or regulatory burdens imposed under the drawback program. Any additional burdens would flow solely from the increase in the availability of the program.

Title VII would impose additional paperwork or regulatory burdens on taxpayers choosing to take advantage of the foreign tax credit carryback or carryforward rules. Those burdens, which would apply solely as a result of the taxpayer's choice to avail itself of the benefits of the credit, would entail additional filing and recordkeeping requirements.

The Title VII modifications to the capital construction fund would marginally increase the availability of that program to any qualified taxpayer owning or leasing a qualified vessel. The program allows a deduction for amounts contributed to a capital construction fund. To the extent any newly qualified taxpayer chooses to avail itself of the benefits of section 7518, it will be subject to the otherwise applicable requirements of that section in terms of the paperwork and regulatory burden imposed on individuals or businesses which choose to participate in the program.

2. Impact on Personal Privacy and Paperwork

The Trade and Tariff Act of 1998 will have little impact on personal privacy. Certain of its provisions which require the filing of certain information with the United States government in order to demonstrate eligibility for certain tax or tariff benefits would, potentially, subject accounting records to review by the government agency administering the program.

B. Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4). The Committee on Finance has reviewed the provisions of the Trade and Tariff Act of 1998 as approved by the Committee on July 21, 1998. In accordance with the requirements of Public Law No. 104–4, the Committee has determined that the revenue provisions of the bill contain the following private sector mandate:

Modify foreign tax credit carryback and carryforward rules (bill section 7002).

This revenue provision will involve a net private sector mandate totaling $1,571 million in fiscal years 1999–2002 and $3,190 million in fiscal years 1999–2007. These amounts are no greater than the aggregate estimated amounts the private sector will be required to pay in order to comply with this private sector mandate during these periods. The revenue raised from this provision is intended to offset the budget costs of the trade provisions of the bill.

The revenue provisions of the bill will not impose a Federal intergovernmental mandate on State, local or tribal governments.

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

In the opinion of the Committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).