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REPORT
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UNITED STATES-SINGAPORE FREE TRADE AGREEMENT IMPLEMENTATION ACT

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

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

JOINT REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1417]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, and the Committee on the Judiciary, to which was jointly referred the bill (S. 1417) to implement the United States-Singapore Free Trade Agreement, having considered the same, reports thereon and recommends that the bill do pass.

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I. REPORTS AND OTHER MATTERS OF THE COMMITTEES

PART I. REPORT OF THE COMMITTEE ON FINANCE

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

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

1. Background

On November 16, 2000, President William J. Clinton and Prime Minister Goh Chok Tong of Singapore agreed that in December 2000, the two countries would begin negotiations on a United States-Singapore Free Trade Agreement with the goal of completing negotiations before the end of 2000. On August 6, 2002, President George W. Bush signed the Trade Act of 2002, which provides expedited procedures for consideration of legislation implementing trade agreements that meet objectives under the Act. On October 1, 2002, President Bush notified Congress of ongoing negotiations between the United States and Singapore on a Free Trade Agreement. On January 29, 2003, President Bush notified Congress of his intention to enter into the United States-Singapore Free Trade Agreement. President Bush and Prime Minister Goh signed the Agreement on May 6, 2003.

2. Trade Promotion Authority Procedures In General

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

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

3. Notification Prior to Negotiations

Under section 2104(a)(1) of the Act, the President must provide written notice to the Congress at least 90 calendar days before initiating negotiations. Section 2104(a)(2) requires the President, before and after submission of the notice, to consult regarding the negotiations with the relevant Committees of Congress and the Congressional Oversight Group established under section 2107 of the Act. Section 2106 of the Act exempts Singapore from the pre-negotiation notification and consultation requirements of section 2104(a) only. Section 2106(b)(2), however, requires the President, as soon as feasible after the enactment of the Act, to notify Congress of, and consult with Congress about, the negotiations. The Act was enacted on August 6, 2002 as part of the Trade Act of 2002 (Pub. L. 107–210). On October 1, 2002, President George W. Bush notified the Congress of the United States' ongoing negotiations with Singapore on a free trade agreement.

4. Notification of Intent To Enter Into an Agreement

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

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

5. Development of the Implementing Legislation

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

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

6. Formal Submission of the Agreement and Legislation

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

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

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

7. Committee and Floor Consideration

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

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

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

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

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

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

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

B. GENERAL BACKGROUND

1. United States-Singapore Trade

Singapore is the 12th largest trading partner of the United States in terms of total trade. With a gross domestic product (GDP) of about $88 billion, and per capita income of about $20,900, Singapore has one of the highest per capita GDPs in the world. It is a major trading country whose exports and imports each generally exceed its GDP.

Some 1,600 U.S. companies and close to 20,000 American citizens are located in Singapore. Many U.S. multinational corporations use Singapore as a regional headquarters and base to export around the world. The United States is Singapore's largest foreign direct investor, while Singapore is the second largest Asian investor in the United States after Japan. As of 2001, Singapore accounted for $26.7 billion in American direct investment, or a little over 12 percent of total U.S. direct investment in Asia and the Pacific.

Singapore is the largest trading partner of the United States in Southeast Asia with two-way trade of $30.3 billion and a U.S. bilateral merchandise trade surplus in 2002 of $0.6 billion (down from $0.9 billion in 2001), a reversal from the deficit of $3.1 billion in 2000. The United States generally runs a surplus in services trade with Singapore. Singapore is the 11th largest export market for the United States with $14.7 billion in merchandise exports in 2002. It is the 16th largest source for goods imported into the United States with $14.1 billion in 2002. The United States is Singapore's second largest trading partner (after Malaysia, while Japan is third). In bilateral trade by sectors, the United States runs surpluses with Singapore in aircraft; electrical machinery; plastic; mineral fuel; instruments; miscellaneous chemical products; aluminum; dyes, paints, and putty; and iron and steel products. The United States incurs deficits with Singapore in machinery; organic chemicals; a special other category under Chapter 98 of the HTS; knit apparel; special import reporting provisions under Chapter 99 of the HTS; fish and seafood; woven apparel; and books and newspapers.

2. Tariffs and Trade Agreements

Virtually all of Singapore's imports enter Singapore duty-free. Only beer and certain alcoholic beverages are subject to import tariffs. Singapore does, however, impose high excise taxes on distilled spirits and wines, tobacco products, and motor vehicles. The Government of Singapore also bans chewing gum. These practices are addressed in the Agreement.

Singapore has implemented free trade agreements with New Zealand (effective January 1, 2001) and with the European Free Trade Area (effective January 1, 2003). The European Free Trade Area encompasses Iceland, Norway, Switzerland, and Liechtenstein. In January 2002, Singapore concluded a free trade agreement with Japan that excludes agricultural products. Singapore has also completed free trade negotiations with Australia (agreement signed on February 17, 2003), and is in negotiations with Mexico (since July 2000) and Canada (since October 2001). On November 14, 2002, Singapore established a study group to explore a free trade agreement with South Korea. As a member of the Association of South East Asian Nations (ASEAN), Singapore also is a participant in The Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the Peoples Republic of China (signed November 4, 2002), under which tariffs are to be reduced or eliminated by 2010.

U.S. EXPORTS TO SINGAPORE, 1997–2002

[In millions of dollars]

HTS category	1997	1998	1999	2000	2001	2002
84—Machinery	4,936.9	4,298.2	4,569.0	5,373.2	4,631.2	4,159.0
85—Electrical machinery	5,842.2	5,198.8	5,276.7	5,946.5	4,415.3	3,819.1
88—Aircraft, spacecraft	1,630.6	1,833.6	1,547.1	840.4	3,544.3	2,828.2
90—Optical, medical equipment	1,014.6	895.4	1,016.3	1,364.8	1,020.2	1,124.7
27—Mineral fuels, oil, etc.	193.9	109.7	282.1	311.4	475.3	615.3
39—Plastics	549.8	480.4	535.6	656.8	546.3	602.0
98—Special other	489.7	502.7	511.1	554.4	550.7	499.3
29—Organic chemicals	488.1	339.9	385.1	402.8	405.5	368.2
38—Misc. chemical products	326.7	252.8	293.5	358.2	285.4	316.2
76—Aluminum	168.4	154.1	142.4	71.8	28.6	118.0
32—Tanning, dyes, paints	90.5	76.3	106.4	89.1	77.8	107.4
73—Iron/steel products	107.4	118.8	110.9	114.2	104.2	107.3
87—Vehicles, not railway	176.9	138.2	107.3	93.0	124.1	100.8
37—Photographic/cinematic	87.9	75.6	94.7	105.2	87.3	97.2
28—Inorganic chemicals/rare earths	57.6	46.8	58.9	70.8	73.4	92.1
Other	1,566.1	1,152.3	1,209.3	1,463.8	1,322.0	1,266.6
Total exports	17,727.4	15,673.5	16,246.4	17,816.4	17,691.6	16,221.2

Note.—HTS = harmonized tariff schedule number.

Source: U.S. International Trade Commission Dataweb.

U.S. IMPORTS FROM SINGAPORE, 1997–2002

[In millions of dollars]

HTS category	1997	1998	1999	2000	2001	2002
84—Machinery	13,545.9	12,453.0	11,516.0	10,366.1	8,198.0	7,977.9
85—Electrical machinery/equipment	3,504.0	2,995.7	3,209.0	4,762.1	2,955.5	2,389.6
98—Special other	652.0	680.2	953.3	1,161.1	1,016.1	921.3
29—Organic chemicals	688.1	333.6	582.9	634.9	821.2	806.6
90—Optical, medical instruments	435.9	574.3	627.2	713.5	728.9	755.8
61—Knit apparel	232.2	249.6	256.3	264.9	233.6	233.8
27—Mineral fuels, oil, etc.	116.3	106.7	139.6	318.6	188.4	157.9
30—Pharmaceutical products	3.6	6.7	6.6	5.9	4.9	152.0
49—Books, newspapers, manuscripts	124.3	122.9	120.4	120.4	125.0	121.9
99—Other special import provisions	82.8	94.1	109.6	116.0	93.9	87.8
39—Plastics	36.0	34.4	37.1	49.4	40.1	73.0
88—Aircraft, spacecraft	63.7	68.8	56.4	58.7	72.9	61.6
62—Woven apparel	55.0	56.6	69.3	89.7	64.8	52.2
3—Fish and seafood	83.4	63.2	52.8	61.2	54.0	51.1
87—Vehicles, not railway	46.4	47.4	74.1	52.2	33.3	33.6
Other	312.3	328.5	309.0	332.9	268.7	239.7
Total imports	19,981.8	18,215.7	18,119.6	19,107.6	14,899.4	14,115.8

Note.—HTS = harmonized tariff schedule number.

Source: U.S. International Trade Commission Dataweb.

3. International Trade Commission Study

In June 2003, the United States International Trade Commission (ITC) released the results of its investigation (Investigation No. TA–2104–6) into the probable economic effects of a United States-Singapore Free Trade Agreement. The ITC concluded that the economy-wide effects on U.S. trade, production, and economic welfare, of the Agreement's tariff reductions alone are likely to be small. The report explained that this is not an unexpected finding given: the existing open trade relationship; small trade and bilateral investment flows relative to U.S. trade and investment worldwide; and the small size of Singapore's economy relative to that of the United States. The ITC finding, however, serves as an estimate of confirmation, focusing largely on the implications of tariff reduction, which may be quantified, unlike changes in many non-tariff barriers.

At the sectoral level, the report concluded that some sectors of the U.S. economy likely would experience increased import competition from Singapore, while other sectors likely would experience increased export opportunities with respect to Singapore. However, any such increase would be from a very small base, given Singapore's small economy and small market size, and thus have a minimal impact on production, prices, or employment in the corresponding U.S. sector. By the year 2016, the ITC estimated the effects to be greater for U.S. exports of vegetables, fruits, and nuts; meats; and other processed foods. For U.S. imports, the likely effects would be greater for electronic equipment and other machinery and equipment.

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

1. The Agreement

The Agreement comprises an integrated set of reciprocal obligations that will eliminate barriers to trade between Singapore and the United States in a manner that is consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article V of the General Agreement on Trade in Services (GATS). It would enter into force after an exchange of notes on or after January 1, 2004.

2. Chapters

Establishment of the Free Trade Area and Definitions. Parties agree to the establishment of a free trade area and affirm that they will interpret and apply the Agreement in light of the objectives of the Agreement. Parties further agree that existing bilateral rights and obligations will continue to apply and that nothing in the Agreement is to be read as altering any legal obligation under other international agreements. Certain terms within the Agreement are defined, including the territory of each Party to which the free trade agreement will apply. For the United States, this includes the customs territory of the United States, foreign trade zones within the United States and Puerto Rico, and the undersea international economic zone; insular possessions of the United States and any area of outer space are not covered. For Singapore, this includes all territory, land, sea or air, under its sovereign control.

National Treatment and Market Access for Goods. The Agreement sets forth the principal rules governing trade in goods, requiring each Party to treat products from the other Party in a non-discriminatory manner. It provides for the phase-out of tariffs on "originating goods" (as defined by the rules of origin) that are traded between the two Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Upon the Agreement's entry into force, Singapore is to apply zero tariffs immediately on all U.S. products. U.S. tariffs on 92 percent of Singaporean goods are also to be eliminated immediately, with remaining tariffs phased out over periods of up to 10 years. In addition, U.S. merchandise processing fees on imports of originating goods from Singapore will be eliminated. The Agreement also provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Certain products, including professional equipment, goods for display or demonstration, and commercial samples, will be granted duty-free temporary admission without the usual bonding requirement applied to imports. Import and export restrictions, fees, and formalities, such as export and import price requirements, import licensing conditioned on performance requirements, and voluntary export restraints inconsistent with the GATT 1994, will be prohibited.

Singapore will harmonize its excise taxes on imports of distilled spirits by 2005, allow imports of chewing gum with therapeutic value, and eliminate its ban on imports of satellite dishes. During the first 9 years that the Agreement is in force, the United States will provide tariff preference levels for specific and limited amounts of certain non-originating apparel from Singapore. These tariff preference levels (TPLs) will apply to a limited quantity of cotton and man-made fiber goods cut and sewn in Singapore using fabric or yarn imported from third countries. In the first year after the TPL provisions take effect, TPL status will apply to 25 million square meters of apparel. This quantity will be reduced each year thereafter. The TPL program will terminate 9 years after it first takes effect. The United States will phase out duties on TPL imports in five equal annual increments once the TPL program takes effect, with the U.S. duty rate reduced to zero beginning on the first day of the fifth year.

Rules of Origin. Chapter 3 of the Agreement sets out duty benefits that will apply to goods considered to be "originating goods" under the rules of origin set out in the Agreement and in Annexes 3A, 3B and 3C. Chapter 3 of the Agreement includes four alternative sets of criteria under which a product will generally qualify as an originating good. They are: (1) when a good is wholly obtained or produced in the territory of one or both of the Parties; (2) when a good is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both Parties; (3) when a good falls under the "integrated sourcing initiative" category of goods listed in Annex 3B; or (4) the good meets any applicable "regional value content" requirement, or the good meets the de minimis rule and all other applicable criteria of Chapter 3.

The Agreement also clarifies that simple combining or packaging operations, or mere dilution with water or another substance that does not change the characteristics of the good, will not confer origin.

Under the de minimis rule, a good can receive originating status if the value of non-originating materials does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Agreement. Chapter 3 of the Agreement also outlines the regional value content test whereby a good can qualify for originating status if a specified percentage of the value of the good is attributable to originating materials. The Agreement provides two methods for calculating that percentage: the "build-down method" based on the value of non-originating materials used, and the "build-up method" based on the value of originating materials used. Under the Agreement, accessories, spare parts, and tools delivered with a good will be considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The de minimis rule does not apply in calculating regional value content.

The Agreement requires that the denial of preferential treatment by a Party must be issued in writing and accompanied by legal and factual findings. Each Party may require that an importer retain, for up to 5 years, records necessary for demonstrating that a good is originating. Further, a Party will not penalize an importer where the importer promptly and voluntarily corrects a claim and pays any duties owed within 1 year of submission of the claim. Chapter 3 of the Agreement also contains provisions for the verification of the originating status of goods.

The Agreement also contains textile and apparel rules of origin. A textile or apparel product will generally qualify as an originating good only if all processing (e.g., yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification as specified in Annex 3A of the Agreement. A special 7 percent de minimis rule applies to certain textile and apparel products. This special de minimis rule does not apply to elastomeric yarns.

Parties to the Agreement shall work together to ensure the effective and uniform application of the rules found in Chapter 3 of the Agreement. Modifications of Annexes 3A, 3B, and 3C may, upon consultation, be considered. Either Party may convene consultations in which the Parties will consider whether to modify the textile and apparel rules of origin.

Customs Administration. The Agreement commits each Party to observe certain transparency and rulemaking obligations for customs administration. Each Party must promptly publish its customs measures on the Internet or in print form and, where possible, solicit public comments before amending customs regulations. Parties will also provide written advance rulings, on request, to its importers and to exporters of the other Party regarding whether a product qualifies as an originating good under the Agreement, as well as on other customs matters. Each Party will guarantee importers access to both administrative and judicial reviews of customs decisions.

The Agreement calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. Parties will also release goods from customs promptly and apply expedited procedures for clearing express shipments through customs under security considerations. Specific provisions calling for the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries are also provided. Provisions for the clearance and handling of express shipments are also included.

Textile and Apparel. The Agreement commits the Parties to adopt or maintain certain administrative, judicial, and enforcement measures, relating to trade in textile and apparel goods, which include: anti-circumvention, monitoring, cooperation and information sharing, enforcement, confidentiality, consultations, and safeguard actions.

Parties are to prevent circumvention by undertaking measures to enforce domestic laws related to circumvention of textile and apparel import rules and to cooperate in the enforcement of the other Party's laws related to circumvention. Singapore will establish and maintain a number of monitoring programs designed to enhance the enforcement of its laws relating to trade in textile and apparel goods. Among others, these include measures to: (1) monitor imports, exports, and production of textile and apparel goods in free trade zones; (2) institute a system of registration, inspection, record keeping and reporting covering all enterprises that produce textile or apparel goods claimed to be originating goods under the Agreement or marked as "products of Singapore," and all enterprises that export such goods to the United States; and (3) establish and maintain a program to ensure that goods en route to the United States bear accurate country of origin markings and that the documents accompanying the goods accurately describe the goods.

Parties will share documents and information relevant to circumvention of their rules governing textile and apparel imports. They will investigate claims of circumvention and, where appropriate, perform on-site verifications and take enforcement action. If the United States discovers that an enterprise in Singapore is engaged in intentional circumvention, it may temporarily bar imports from the enterprise. Further, either Party may convene bilateral consultations on circumvention issues.

Textile and apparel provisions and pertinent provisions of national treatment and market access for goods, as well as rules of origin, will take effect after the Parties consult and exchange written notices that legislation needed to implement the provisions is in place.

Chapter 5 of the Agreement establishes a specific bilateral safeguard mechanism for textiles and apparel goods. A Party may take a safeguard action with respect to a textile or apparel good benefiting from preferential tariff treatment under the Agreement if that good is being imported in such increased quantities and under such conditions that imports of the good from the other Party constitute a substantial cause of serious damage, or actual threat thereof, to a domestic industry. The safeguard actions authorized in the Agreement consist of: a suspension of the further reduction of any rate of duty provided for under the Agreement on the good; or, an increase in the rate of duty on the good, to a level not to exceed the lesser of the normal trade relations/most-favored-nation (NTR/MFN) applied rate of duty in effect at the time the action is taken or the NTR/MFN applied rate of duty in effect on the date of entry into force of the Agreement.

A safeguard action, including any extension of such action, may not be maintained under Chapter 5 of the Agreement for more than 4 years, and no safeguard action may be taken or maintained beyond the period ending 10 years after the entry into force of the terms of the Agreement relating to textile and apparel goods under Article 5.10 of the Agreement. In addition, no safeguard action may be taken by an importing Party against a particular textile or apparel good of the other Party more than once, and upon termination of a safeguard action, the rate of duty on the good shall be the rate that would have been in effect but for the safeguard action.

The Party taking a safeguard action must provide mutually agreed-upon trade liberalizing compensation in the form of concessions having substantially equivalent trade effects, or equivalent value, compared to the additional duties resulting from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties agree otherwise. If the Parties are unable to reach an agreement on compensation, the exporting Party may take action with respect to textile and apparel goods of the other Party that has trade effects substantially equivalent to the trade effects of the safeguard action taken under Chapter 5 of the Agreement. However, the right to take such action shall not be exercised for the first 24 months that the textile or apparel safeguard action is in effect, provided that the safeguard action was taken in response to an absolute increase in imports and such action conforms to the provisions of Chapter 5 of the Agreement.

Nothing in Chapter 5 of the Agreement shall be construed to limit a Party's rights and obligations under Chapter 7 (Safeguards) of the Agreement, except that a bilateral safeguard measure under Chapter 7 of the Agreement may not be taken with respect to textile or apparel goods that have been subject to a safeguard action under Chapter 5 of the Agreement. Nothing in Chapter 7 of the Agreement shall be construed to affect a Party's rights and obligations under Chapter 5 of the Agreement. In addition, nothing in Chapter 5 of the Agreement shall be construed to limit the ability of a Party to restrain imports of textile and apparel goods in a manner consistent with the WTO Agreement on Textiles and Clothing or the WTO Agreement on Safeguards.

Technical Barriers to Trade. The Agreement enhances existing WTO obligations by encouraging the Parties to exchange information on technical barriers to trade (TBT) issues, hold consultations to resolve issues, and use international standards as a basis for technical regulations, standards, and conformity assessment procedures. It encourages the Parties to enhance their cooperation in the context of other agreements, including taking steps toward the implementation of the first two phases of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment. Each Party is to designate a TBT coordinator to work with domestic firms and groups and the other Party's TBT coordinator on enhancing bilateral cooperation. A working group on medical products and their regulation is established under annex 6A.

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

If serious injury to a domestic industry, or threat thereof, is found under procedural and investigative requirements pursuant to domestic law and in accordance with the WTO Agreement on Safeguards, the importing Party may suspend any further staged reductions in customs duties on the good, or may increase the customs duty rate to a level not greater than a specified normal trade relation/most-favored-nation (NTR/MFN) rate. A bilateral safeguard measure can be imposed for up to 4 years, including any extension of the original measure; for safeguards applied for more than 1 year, the Party must progressively liberalize the safeguard measure at regular intervals. Upon termination of the safeguard measure, the rate of customs duty on the originating good reverts to the rate that would have been in effect but for the measure.

The Agreement also permits the imposition of provisional safeguard measures in critical circumstances where delay would cause damage that would be difficult to repair, subject to a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as a result of the reduction or elimination of a customs duty pursuant to the Agreement, and that such imports constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry. A provisional measure may be imposed under such circumstances for up to 200 days, during which time the Party must complete the safeguard investigation.

The Party imposing a safeguard measure must provide mutually agreed-upon trade liberalizing compensation in the form of concessions having substantially equivalent trade effects, or equivalent value, compared to the additional customs duties resulting from the safeguard measure. If the Parties are unable to reach an agreement on compensation, the exporting Party may take substantially equivalent action with respect to the originating goods of the other Party. Under Chapter 7, a bilateral safeguard measure cannot be applied more than once to an originating good, nor may a bilateral safeguard be applied or maintained to an originating good that has been subject to any other safeguard measure since the entry into force of the Agreement. Chapter 7 permits the imposition of a bilateral safeguard measure only during the 10 year transition period identified in the Agreement, unless the Party against whose originating good the measure is applied consents to the measure.

Each Party retains its rights and obligations in accordance with the WTO Agreement on Safeguards, and the Agreement does not confer any additional rights or obligations on the Parties with respect to actions taken in accordance with the WTO Agreement on Safeguards, except that a Party imposing a global safeguard measure may exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat of serious injury.

Cross-Border Trade in Services. Under the Agreement, cross-border trade in services covering the supply of a service either: (1) from the territory of one Party into the territory of another; (2) in the territory of a Party by a person of that Party to a person of the other Party; or (3) by a national of a Party in the territory of another Party, shall be accorded national treatment and normal trade relation/most-favored-nation (NTR/MFN) treatment. The Agreement also includes a rule prohibiting Parties from requiring firms to establish a local presence before they can supply a service.

In addition, the Agreement seeks to remove market access barriers by barring certain types of restrictions on the supply of services (e.g., rules limiting the number of firms that may offer a particular service or restricting or requiring specific types of legal structures or joint ventures with local companies in order to supply a service). The Agreement's market access rules apply both to services supplied on a cross-border basis and through a local investment.

The Agreement contains Annexes listing exemptions from certain service provisions of the Agreement. Further, all existing state and local laws and regulations are exempted from the service obligations. Once a Party liberalizes a measure that it has exempted, it must thereafter maintain the measure at least at that level of openness.

The Agreement includes provisions on transparency and domestic regulation that apply to the development and application of regulations governing services and rules on domestic regulation that govern the operation of approval and licensing systems for service suppliers. The Agreement also excludes any service supplied in the exercise of governmental authority (a service that is provided on a non-commercial and non-competitive basis). The Agreement does not generally apply to government subsidies, although Singapore has undertaken a commitment relating to cross-subsidization of certain express delivery services.

Telecommunications. The Agreement provides for non-discriminatory access to public telecommunications networks for the service suppliers of each nation. Telecommunication network users are guaranteed reasonable and non-discriminatory access and transparent and effective enforcement by telecommunications regulators.

In addition, the Agreement requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Phone companies are to obtain the right to interconnect with networks in a timely fashion and on terms, conditions, and cost-oriented rates that are transparent and reasonable. Firms seeking to build a physical network are to be granted non-discriminatory access to buildings that contain telephone switches and submarine cable heads. Firms are to be able to lease elements of telecommunication networks on non-discriminatory terms and to re-sell telecommunication services to build their customer bases.

The Agreement opens rulemaking procedures within telecommunication regulatory authorities and requires publication of inter-connection agreements and service rates. The Agreement also requires Parties to make deregulation commitments tied to the emergence of competition in a telecommunication services area. The Agreement specifies that companies will compete on the basis of technology and innovation, not on government-mandated standards.

In a letter from Singapore's Trade Minister signed along with the Agreement, Singapore has committed to establish a plan to divest its majority interest in Singapore's two leading telecommunications firms.

Financial Services. Chapter 10 of the Agreement applies to measures adopted or maintained by a Party relating to: financial institutions of the other Party; investors of the other Party, and investments of such investors, in financial institutions within the Party's territory; and, cross-border trade in financial services. Chapter 10 of the Agreement does not apply to measures adopted or maintained by a Party relating to: activities or services forming part of a public retirement plan or statutory system of social security; or, activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities. The foregoing exceptions to the application of Chapter 10 of the Agreement do not apply if a Party allows any of the foregoing activities or services to be conducted by its financial institutions in competition with a public entity or a financial institution.

Under the Agreement, each Party will accord national treatment and normal trade relation/most-favored-nation (NTR/MFN) treatment to investors of the other Party and will provide market access for financial institutions without limitations on, inter alia, the number of financial institutions, the total value of financial service transactions or assets, the total number of financial service operations or the total quantity of financial services output, or the number of natural persons that may be employed in a particular financial service sector. A Party shall not adopt or maintain measures that restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Under the terms of the Agreement, a Party may not require financial institutions of the other Party to hire individuals of a particular nationality as senior managerial or other essential personnel, nor may a Party require more than a simple majority of the board of directors to be nationals or residents of the Party. Provisions are made for nonconforming measures maintained by a Party, and Chapter 10 of the Agreement enumerates certain exceptions to the application of: Chapter 10; Chapter 9 (Telecommunications); Chapter 14 (Electronic Commerce); Chapter 15 (Investment); and Articles 8.2.2 and 8.10 of Chapter 8 (Cross-Border Trade in Services).

The Parties recognize the importance of transparency and agree that transparent regulations and policies shall be published in advance of general application. Parties shall also maintain or establish mechanisms to respond to inquiries from interested persons. The Agreement establishes a Financial Services Committee under Article 10.16 to promote objective and transparent regulatory processes in each Party. A Party may request consultations with the other Party regarding any matter arising under the Agreement. As modified by Article 10.18 of the Agreement (Dispute Settlement), Article 20.4 applies to the settlement of disputes between the Parties arising under Chapter 10 of the Agreement.

If an investor of a Party submits a claim under Section C of Chapter 15 of the Agreement (Investor-State Dispute Settlement) against the other Party and the respondent invokes Article 10.10 (Exceptions), on the request of the respondent, the tribunal shall refer the matter to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under Chapter 10 of the Agreement.

Annex 10A specifies the application of Chapter 10 of the Agreement to insurance and insurance-related services, and banking and other financial services (excluding insurance), in the United States and Singapore. Annex 10B of the Agreement contains Introductory Notes for the Schedules of the United States and Singapore to Annex 10B, while Annex 10C of the Agreement lists specific commitments of the United States and Singapore relating to financial services. Annex 10D of the Agreement details additional information with respect to the Financial Services Committee established pursuant to article 10.16 of the Agreement.

Temporary Entry. Chapter 11 of the Agreement sets forth general principles and obligations with respect to providing for the temporary entry of business persons. These provisions are more fully addressed in Part II., Report of the Committee on the Judiciary.

Competition Policy. The Agreement requires each Party to adopt or maintain laws prohibiting anti-competitive business conduct and an agency to enforce them. In particular, Singapore has committed to enact general antitrust legislation by January 2005. Each Party will take appropriate enforcement action to address anti-competitive business conduct. The Agreement also affirms that each Party's antitrust enforcement policy is not to discriminate on the basis of nationality.

Basic procedural rights for firms facing antitrust enforcement actions are provided, requiring each Party to provide such firms with the right to be heard and to present evidence before imposing a sanction or remedy, and ensuring that any sanctions or remedies are subject to review by a court or independent tribunal.

Parties must ensure that private or government-owned entities that are granted the sole right to provide or purchase a good or service conduct themselves in a manner consistent with commercial considerations; that they do not discriminate against the other Party's goods or service suppliers, and that they do not use their monopoly position to engage in anti-competitive practices in markets outside their monopoly mandate. The Agreement further requires that Singapore ensure that its government enterprises act in accordance with commercial considerations, provide non-discriminatory treatment to U.S. goods and services suppliers, and refrain from entering into anti-competitive agreements among competitors or engaging in exclusionary practices that reduce competition to the detriment of consumers.

Singapore shall also publish an annual report detailing its ownership and control of larger government enterprises, and will provide the same information for enterprises of any size upon U.S. request. Singapore will not exercise influence over its government enterprises except in a manner consistent with the Agreement, and will continue to reduce its aggregate ownership and other interests in these enterprises. The United States will ensure that its government enterprises accord non-discriminatory treatment in their sales of goods and services to Singaporean companies.

Parties to the Agreement are to cooperate on competition law and policy developments and further transparency by providing for the exchange of publicly available information on antitrust enforcement and on designated monopolies and government enterprises. The Parties may also request consultations to discuss specific issues. Where pertinent in such consultations, Singapore will provide information regarding the steps it plans to take or has taken to address anti-competitive conduct by a government enterprise.

Provisions requiring the Parties to adopt and enforce antitrust laws are not subject to the Agreement's dispute settlement procedures. However, rules addressing conduct by designated monopolies and government enterprises can be enforced through the Agreement's dispute settlement mechanism.

Government Procurement. The Agreement establishes obligations regarding government purchases that extend beyond those that the Parties have undertaken under the WTO Agreement on Government Procurement (GPA). These include such areas as thresholds, scope and coverage, and procedures for withdrawing entities from coverage when a government's control or influence over them has been eliminated. The Agreement also commits Parties to cooperate in the ongoing review of the GPA, on procurement matters in APEC, and in WTO negotiations regarding transparency in government procurement.

The provisions on government procurement within the Agreement cover purchases above certain dollar thresholds by government departments and entities that each Party has listed in its relevant Schedules to the GPA. The Agreement applies to central or Federal Government procurement of goods and services valued at $56,190 or more and construction services valued at $6,481,000 or more. The Agreement's provisions also apply to certain purchases by U.S. State governments listed in the GPA Schedule of the United States, namely, the procurement of goods and services valued at $460,000 or more and construction services of $6,481,000 or more. For government enterprises subject to the Parties' commitments under the GPA, the Chapter's thresholds are set at either $250,000 or $518,000 for goods and services, and $6,481,000 for construction services.

The Agreement incorporates the GPA's basic rule of national treatment and bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. The Agreement also includes GPA rules designed to ensure transparency in procurement procedures. Each Party must publish laws, regulations and other measures governing procurement, along with any changes to those measures. Further, procuring entities must publish notices of procurement opportunities in advance.

The Agreement incorporates GPA rules for setting deadlines on tendering and requires procuring entities to give suppliers information needed to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. The Agreement also requires that procuring entities publish information on awards, including the names of suppliers, a description of the goods or services procured, and the value of the contract.

Electronic Commerce. The Agreement includes provisions on electronic commerce which establish explicit guarantees that the principle of non-discrimination applies to products delivered electronically. It further establishes a binding prohibition on customs duties charged on digital products delivered electronically, such as legitimate downloads of music, videos, software or text.

The Agreement makes binding a number of commitments that are now only voluntary or temporary commitments under the WTO. It affirms that any commitments made related to services in the Agreement also extend to the electronic delivery of such services, such as financial services delivered over the Internet. Parties have agreed to the non-discriminatory treatment of digital products and the permanent duty-free status of products delivered electronically.

Investment. The Agreement provides national treatment protections for investors. Among the rights afforded to investors (consistent with those found in U.S. law) are due process protections and the right to receive fair market value for property in the event of an expropriation. The Agreement prohibits and removes certain performance-related requirements or restrictions on investors, such as limitations on the number of locations or the requirement that an investor export a given level of goods and services as a condition for the investment.

The Agreement ties investor protections to standards developed under customary international law. It further obligates Parties to provide investors with treatment in accordance with "customary international law" rather than in accordance with "international law" (as was done in NAFTA).

The Agreement includes an investor-State mechanism under which investors aggrieved by government actions that are in breach of obligations under the Agreement have the right to take the dispute directly to an international arbitration tribunal for resolution. Submissions to dispute panels and panel hearings are to be open to the public, and interested parties are to have the opportunity to submit their views.

Intellectual Property Rights. The Agreement provides for the protection of copyrights, patents, trademarks and trade secrets. It enhances enforcement of intellectual property rights and requires that non-discrimination obligations apply to all types of intellectual property. The Agreement will require Singapore to ratify or accede to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The Agreement also includes full national treatment commitments, with no exceptions for digital products. It also requires each Party to publish its laws, regulations, procedures, and decisions concerning the protection or enforcement of intellectual property rights.

The Agreement imposes rules with respect to the registration of collective, certification, and sound marks, as well as geographical indications and scent marks. It also imposes rules for domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy. The Agreement streamlines the trademark filing process by allowing applicants to use their own national patent/trademark offices for filing trademark applications.

The Agreement further ensures that only authors, composers, and other copyright owners, have the right to make their works available online. Copyright owners maintain rights to temporary copies of their works on computers. Copyrighted works and phonograms are protected for extended terms, consistent with U.S. standards and international trends. The Agreement also contains anti-circumvention provisions aimed at preventing the tampering with technologies (such as embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet. The Agreement also ensures that governments use only legitimate computer software.

Under the Agreement, protection for encrypted program-carrying satellite signals extends to the signals themselves as well as the programming. Parties have agreed to criminalize unauthorized reception and re-distribution of satellite signals. The Agreement also contains limited liability for internet service providers.

The Agreement provides for a patent term to be extended to compensate for up-front administrative or regulatory delays in granting the original patent. The grounds for revoking a patent are limited to the same grounds required to originally refuse a patent. The Agreement also provides protection for patents covering biotech plants and animals. In addition, the Agreement provides for protection against imports of pharmaceutical products without a patent-holder's consent by allowing lawsuits when contracts are breached.

Under the Agreement, test data and trade secrets submitted to a government for the purpose of product approval are to be protected against disclosure for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. The Agreement also closes potential loopholes to these provisions and is designed to ensure that government marketing-approval agencies will not grant approval to patent-violating products.

Under the Agreement, there are criminal penalties for companies that make pirated copies from legitimate products. Intellectual property right laws are to be enforced against traded goods, including transshipments, to deter violators from using U.S. or Singaporean ports or free-trade zones to traffic in pirated products. The Agreement mandates both statutory and actual damages for intellectual property rights violations and provides that monetary damages be awarded even if actual economic harm (retail value, profits made by violators) cannot be determined. The Agreement also restricts the use of compulsory licenses to copy patented drugs and sets up new barriers to the import of patented drugs sold at lower prices in third countries.

Labor. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (ILO Declaration). The Agreement provides that each Party must strive to ensure that its domestic labor laws recognize and protect the fundamental labor principles spelled out in the ILO Declaration and listed in Chapter 17 of the Agreement. Each Party also commits not to weaken protections under domestic labor laws in order to encourage bilateral trade or investment. The Agreement defines labor laws to mean those statutes or regulations directly related to: the right of association; the right to organize and bargain collectively; a prohibition of forced or compulsory labor; a minimum age for the employment of children and elimination of the worst forms of child labor; and, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

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

The Agreement authorizes the Joint Committee established under Chapter 20 of the Agreement to create a Subcommittee on Labor Affairs to provide a forum for consultation on the Agreement and its implementation. Meetings of the Subcommittee shall include a public session, unless the Parties otherwise agree. The Agreement also establishes a United States-Singapore Labor Cooperation Mechanism to: promote respect for ILO labor principles and other common commitments; establish priorities for cooperative activities on labor matters; develop specific cooperative activities; exchange information; and, develop recommendations for consideration by the Joint Committee.

A Party can request consultations with the other Party regarding any matter arising under Chapter 17 of the Agreement. If the Parties fail to resolve the matter through consultations, either Party may then request that the Subcommittee on Labor Affairs be convened to address the matter. Dispute settlement procedures are available only when a Party asserts under Article 17.2.1(a) that the other Party has failed to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties. In that instance, the complaining Party may request dispute settlement proceedings under Chapter 20 of the Agreement, after an initial 60-day consultation period, by referring the matter to the Joint Committee.

If a panel determines that a Party has not conformed with its obligations under Article 17.2.1(a) and the Parties are unable to reach agreement on a resolution, the complaining Party may request that the panel reconvene to impose an annual monetary assessment on the other Party not to exceed $15 million, adjusted for inflation pursuant to Annex 20A of the Agreement. Any assessments will be paid into a fund established by the Joint Committee and utilized for labor initiatives. Suspension of tariff benefits of an equivalent dollar value may result from a Party's failure to pay the monetary assessment.

Environment. Chapter 18 of the Agreement recognizes the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify its environmental laws. Each Party is obliged to provide fair, open, and equitable proceedings for the enforcement of its environmental laws, as well as appropriate and effective remedies for violation of its environmental laws.

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

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

Chapter 18 of the Agreement defines environmental laws as any statutes or regulations of a Party, or provisions thereof, the primary purpose of which is the protection of the environment or the prevention of a danger to human, animal, or plant life or health, through: the prevention, abatement, or control of the release or emission of pollutants or environmental contaminants; the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes; or, the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas. The Agreement excludes from the definition of environmental laws any statute or regulation, or provision thereof, directly related to worker safety or health.

Chapter 18 calls for the establishment of a Subcommittee of the Joint Committee established under Chapter 20 of the Agreement to provide a forum for consultation on the Agreement and its implementation. Meetings of the Subcommittee shall normally include a session where members of the Subcommittee have an opportunity to meet with the public to discuss matters related to Chapter 18 of the Agreement. Separately, each Party commits to ensure the opportunity for public participation in the discussion of matters related to Chapter 18 of the Agreement. The Parties also commit to pursue cooperative environmental activities, and to strengthen environmental performance, under a Memorandum of Intent on Cooperation in Environmental Matters to be entered into between the Government of Singapore and the United States, and in other fora.

A Party can request consultations with the other Party regarding any matter arising under Chapter 18 of the Agreement. If the Parties fail to resolve the matter through consultations, either Party may then request that the Subcommittee of the Joint Committee be convened to address the matter. Dispute settlement procedures are available only when a Party asserts under Article 18.2.1(a) that the other Party has failed to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties. In that instance, the complaining Party may request dispute settlement proceedings under Chapter 20 of the Agreement, after an initial 60-day consultation period, by referring the matter to the Joint Committee.

If a panel determines that a Party has not conformed with its obligations under Article 18.2.1(a) and the Parties are unable to reach agreement on a resolution, the complaining Party may request that the panel reconvene to impose an annual monetary assessment on the other Party not to exceed $15 million, adjusted for inflation pursuant to Annex 20A of the Agreement. Any assessments will be paid into a fund established by the Joint Committee and utilized for environmental initiatives. Suspension of tariff benefits of an equivalent dollar value may result from a Party's failure to pay the monetary assessment.

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

Transparency. The Agreement provides for the promulgation of measures that ensure transparency and fairness in the adoption and application of administrative action covered by the Agreement. Parties agree, to the fullest extent possible: to the advanced publishing of laws, regulations, procedures, and administrative rulings that they propose to adopt; that on the request of the other Party, a Party shall promptly respond and provide information pertaining to any actual or proposed measure; that administrative proceedings are to be conducted in a consistently impartial and reasonable manner; and, that each Party shall maintain judicial and/or administrative tribunals or procedures for the purpose of the prompt review and possible correction of final administrative actions regarding matters covered by the Agreement.

Administrative and Dispute Settlement. Chapter 20 of the Agreement establishes a dispute settlement mechanism that is generally applicable to disputes between the Parties regarding claims that a measure of a Party is inconsistent with the Agreement or that a Party has otherwise failed to carry out its obligations under the Agreement, or claims that a measure of one Party causes nullification or impairment of benefits to the other Party arising under: Chapter 2 (National Treatment and Market Access for Goods); Chapter 3 (Rules of Origin); Chapter 8 (Cross Border Trade in Services); or Chapter 16 (Intellectual Property Rights). For disputes arising under Chapter 17 (Labor) or Chapter 18 (Environment), dispute settlement procedures under Chapter 20 of the Agreement may be invoked only with respect to a Party's obligation to not fail to effectively enforce its labor or environmental laws, as the case may be, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties.

A Party must first make a written request for consultations and deliver the request to other Party. If the Parties fail to resolve the matter within 60 days of delivery of the request, either Party may refer the matter to the Joint Committee established under Chapter 20 of the Agreement. If the Joint Committee fails to resolve the dispute within 60 days, the complaining Party may refer the matter to a dispute settlement panel. By the date of entry into force of the Agreement, the Parties are obliged to establish a contingent list of five individuals who can each serve as a panelist or chair of a panel. Procedures for panel selection are set forth in the Agreement. The Agreement commits the Parties to establish rules of procedure for panels; these rules shall include the right to at least one public hearing before the panel, subject to the protection of confidential information.

A panel is to present its initial report within 150 days after the chair is appointed. The initial report shall contain findings of fact and a determination as to whether: the measure at issue is inconsistent with the obligations of the Agreement; a Party has otherwise failed to carry out its obligations under the Agreement; or, the measure at issue causes a nullification or impairment of benefits to the other Party as specified in the Agreement. The initial report shall also contain any other determination requested by both Parties with regard to the dispute. After Party comment, the panel is to issue a final report to the Parties within 45 days of the initial report, unless the Parties agree otherwise. Public release of the final report is to occur within 15 days thereafter, subject to the protection of confidential information. Upon receiving the final report, the Parties are to agree on a resolution of the dispute and, in instances of non-conformance with obligations under the Agreement or nullification or impairment of benefits as defined under the Agreement, such resolution, wherever possible, should be the elimination of the nonconformity or the nullification or impairment.

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

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

Where a dispute involves Article 17.2.1(a) (Application and Enforcement of Labor Laws) or Article 18.2.1(a) (Application and Enforcement of Environmental Laws), however, and the Parties either: are unable to reach agreement on a resolution within 45 days of receiving the panel's final report; or, the Parties agree on a resolution of the dispute and the complaining Party considers that the other Party has failed to observe the terms of such resolution, the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party. The panel is to take certain enumerated factors into account in setting the level of monetary assessment; the amount of the assessment shall not exceed $15 million annually, adjusted for inflation pursuant to Annex 20A of the Agreement. The amount is to be paid into a fund established by the Joint Committee and is to be expended at the direction of the Joint Committee for appropriate labor or environmental initiatives, as the case may be, in the territory of the Party complained against. If the assessment is not paid, the complaining Party may take other appropriate steps to collect the assessment, including suspending tariff benefits under the Agreement.

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

Not later than 5 years after the Agreement enters into force, the Joint Committee is required to review the operation and effectiveness of the provisions in Chapter 20 of the Agreement that address non-implementation of the final report (i.e. the provisions allowing for suspension of benefits or imposition of monetary assessments). In the event five proceedings initiated under Chapter 20 of the Agreement result in either the suspension of benefits or the imposition of monetary assessments, the Joint Committee shall complete its review within 6 months of the fifth such occurrence, if sooner than 5 years after the Agreement enters into force.

General and Final Provisions. Chapter 21 of the Agreement sets out general provisions that apply to large portions of the Agreement. It incorporates general provisions on issues such as balance of payments, general exceptions, essential security, taxation, disclosure of information, and corruption, including mechanisms for accession to the Agreement and entry into force of the Agreement, and a provision on the legal significance of Annexes.

Chapter 21 of the Agreement further provides that the Agreement will not affect either Party's rights or obligations under any tax convention and sets out circumstances under which tax measures are subject to the Agreement's national treatment obligation for goods, the national treatment and normal trade relation/most-favored-nation (NTR/MFN) obligations for services, prohibitions on performance requirements, and expropriation rules.

The Agreement also provides that a Party may withhold information from the other Party where disclosure will impede law enforcement, would be contrary to the public interest, or would prejudice the legitimate commercial interests of a public or private enterprise.

Parties further affirm their commitment to the adoption, cooperation on, maintenance, and enforcement of, effective anti-corruption measures, including deterrent penalties against bribery and corruption in international business transactions.

Included in Chapter 21 of the Agreement are terms of accession which allow other countries to accede to the Agreement, subject to terms and conditions agreed upon between such countries and the Parties, in accordance with applicable legal procedures of each Party and the full consent of each Party.

Chapter 21 of the Agreement also provides that the Annexes are part of the Agreement and that the Parties may amend the Agreement subject to applicable domestic procedures. This Chapter also provides that the Agreement will enter into force 60 days after the exchange of written notifications and can be terminated 6 months after a Party provides written notice of its intention to withdraw from the Agreement.

D. GENERAL DESCRIPTION OF THE BILL

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

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

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

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

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

Section 102 also provides that no State law may be declared invalid on the ground that the law is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law invalid. This section precludes any private right of action or remedy against the Federal Government, or a State government, based on the provisions of the Agreement.

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

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

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

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

Sec. 105. Administration of Dispute Settlement Proceedings

This section authorizes the President to establish or designate within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 20 of the Agreement. This section also authorizes the appropriation of funds to support this office.

Sec. 106. Arbitration of Certain Claims

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

Sec. 107. Effective Dates; Effect of Termination

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

TITLE II. CUSTOMS PROVISIONS

Sec. 201. Tariff Modifications

This section authorizes the President to implement by proclamation the continuation, modification or elimination of tariffs as the President determines to be necessary or appropriate to carry out the terms of the Agreement.

Section 201(b) authorizes the President, subject to the consultation and layover provisions of section 103(a) of the bill, to: modify or continue any duty; modify the staging of duty elimination pursuant to an agreement with Singapore under Article 2.2.3 of the Agreement; keep in place duty-free or excise treatment; or, impose any duty by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Singapore provided by the Agreement.

Sec. 202. Rules of Origin

This section implements the general rules of origin set forth in Chapter 3 of the Agreement. Under the general rules, there are four basic ways for a good imported from Singapore to qualify as an originating good, and therefore be eligible for preferential tariff treatment when the good is imported into the United States.

First, a good is an originating good if it is wholly obtained or produced entirely in the territory of Singapore, the United States, or both. Second, the general rules of origin provide that a good is an originating good if those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 3A of the Agreement.

Third, Article 3.2 provides that a good listed in Annex 3B of the Agreement is considered to be an originating good if it is imported into the territory of the United States from the territory of Singapore. The goods listed in Annex 3B are information technology goods and certain other goods for which the current normal trade relation/most-favored-nation (NTR/MFN) duty rate of the United States is zero. Thus, imports of these goods into the United States would receive duty-free treatment regardless of origin. The Agreement provides that a product listed in Annex 3B (the Integrated Sourcing Initiative or ISI product list) is an originating good only if it is shipped from one Agreement Party to the other. If a product is shipped from a non-Agreement party to Singapore, but is not then shipped between Singapore and the United States, the product does not meet the criteria for treatment as an originating good under the Agreement. The ISI provisions of the Agreement do not affect the applicability of normal rules of origin, except in the limited situation of shipments between Singapore and the United States.

Finally, the remainder of section 202 sets forth specific rules for determining whether a good qualifies as an originating good under the Agreement. Section 202(b) provides that a good is not disqualified as an originating good if it contains de minimis quantities of non-originating materials that do not undergo a tariff transformation. Section 202(d) implements provisions in Annex 3A of the Agreement that require certain goods to have at least a specified percentage of regional value content to qualify as originating goods. Section 202(d) prescribes alternative methods for calculating regional value content. Other provisions in section 202 address the valuation of materials and the determination of originating or non-originating status for fungible goods and materials.

This section also authorizes the President to modify certain of the Agreement's specific rules of origin by proclamation, subject to the consultation and layover provisions of section 103 of the Implementation Act. Section 202 expressly limits the President's authority to modify specific rules of origin pertaining to textile and apparel goods and precludes the modification by proclamation of provisions of Annex 3B of the Agreement (the Integrated Sourcing Initiative or ISI product list).

Sec. 203. Customs User Fees

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

Sec. 204. Disclosure of Incorrect Information

This section provides that the United States may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if, after discovering that the claim is invalid, the importer promptly and voluntarily corrects the claim and pays any duty owing.

Sec. 205. Enforcement Relating to Trade in Textile and Apparel Goods

This section authorizes the President to apply anti-circumvention provisions concerning textile and apparel goods. In particular, this section authorizes the President to bar textile and apparel goods from an exporter or producer that has engaged in intentional circumvention or refused permission for U.S. officials to conduct a verification visit at its facilities in Singapore. Section 205 also authorizes the President to take action against circumvention that has not been addressed through bilateral cooperation by denying preferential tariff treatment for the goods subject to the circumvention and for other textile and apparel goods produced by the enterprise that has been found to have engaged in the circumvention.

Sec. 206. Regulations

This section requires the Secretary of the Treasury to prescribe regulations necessary to carry out the tariff-related provisions of the Agreement, including the rules of origin provisions.

TITLE III. RELIEF FROM IMPORTS

Sec. 301. Definitions

This section defines the terms “Commission” and “Singaporean Article” for purposes of the bilateral safeguard provision contained in Chapter 7 of the United States-Singapore Free Trade Agreement. The term “Commission” is defined as the United States International Trade Commission, and the term “Singaporean Article” is defined as an article that qualifies as an originating good under section 202(a) of the United States-Singapore Free Trade Agreement Implementation Act. This section also defines the term “Singaporean Textile or Apparel Article” for purposes of the textile and apparel safeguard provision contained in Chapter 5 of the United States-Singapore Free Trade Agreement. The term “Singaporean Textile or Apparel Article” is defined as an article that is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(4)), and that satisfies the definition of a Singaporean article as provided for in this section.

Subtitle A. Relief From Imports Benefiting From the Agreement

Sec. 311. Commencing of Action for Relief

This section requires the filing of a petition with the Commission by an entity that is representative of an industry in order to commence a bilateral safeguard investigation. Section 311(a) permits a petitioning entity to request provisional relief as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. § 2252(a)). Any request for provisional relief based upon an allegation of "critical circumstances" shall include such allegation in the petition.

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

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

Section 311(d) precludes the initiation of an investigation with respect to any Singaporean article to which import relief has already been provided under either: this bilateral safeguard provision; the textile and apparel safeguard provision set forth in subtitle B of title III of the United States-Singapore Free Trade Agreement Implementation Act; the global safeguard provision set forth in Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.); article 6 of the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(4)); or, article 5 of the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(2)).

Sec. 312. Commission Action on Petition

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

Sec. 313. Provision of Relief

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

Section 313(c) specifies the nature of the import relief that the President may impose, to include: the suspension of any further reduction in duty provided under Annex 2B of the United States-Singapore Free Trade Agreement; and, an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the normal trade relation/most-favored-nation (NTR/MFN) duty rate imposed on like articles at the time the import relief is provided, or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the United States-Singapore Free Trade Agreement enters into force. In the case of a duty applied on a seasonal basis to an article, the President may increase the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the NTR/MFN duty rate imposed on like articles for the immediately preceding corresponding season, or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the United States-Singapore Free Trade Agreement enters into force. Section 313(c) also requires that if the period for which import relief is provided exceeds 1 year, the President shall provide for the progressive liberalization (described in article 7.28 of the United States-Singapore Free Trade Agreement) of such relief at regular intervals during the period of its application.

Section 313(d) provides that the initial period for import relief in a bilateral safeguard action shall not exceed 2 years. The President is authorized to extend the effective period of such relief under section 313(d) if the President determines that import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition. Before the President can extend the period of import relief, the President must first receive a report from the Commission under section 313(d)(2)(B) containing an affirmative determination, or a determination that the President may consider to be an affirmative determination in the event of a divided vote by the Commission, that import relief continues to be necessary to remedy or prevent serious injury and that the domestic industry is making a positive adjustment to import competition. Section 313(d) also provides that the total period for import relief in a bilateral safeguard action, including any extension of such import relief, shall not exceed 4 years.

Section 313(e) provides that upon termination of import relief under the bilateral safeguard provision, the rate of duty to be applied is the rate of duty that would have been in effect on that date with respect to the article, but for the provision of such import relief.

Section 313(f) provides that no import relief may be provided under the bilateral safeguard provision on any article that has been subject to relief, after entry into force of the United States-Singapore Free Trade Agreement, under either: this bilateral safeguard provision; the textile and apparel safeguard provision set forth in subtitle B of title III of the United States-Singapore Free Trade Agreement Implementation Act; the global safeguard provision set forth in Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.); article 6 of the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(4)); or, article 5 of the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(2)). This section is necessary to implement article 7.2.7 of the United States-Singapore Free Trade Agreement, in the event that an article subject to import relief under the bilateral safeguard subsequently becomes subject to import relief under one of these other provisions.

Sec. 314. Termination of Relief Authority

This section provides that the President's authority to impose import relief under the bilateral safeguard provision ends after the date that is 10 years after the date on which the United States-Singapore Free Trade Agreement enters into force. Section 314(b) contains an exception to this general rule. The President may provide import relief under the bilateral safeguard provision after the date that is 10 years after the date on which the United States-Singapore Free Trade Agreement enters into force if the President determines that the Government of Singapore has consented to the imposition of such import relief.

Sec. 315. Compensation Authority

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

Sec. 316. Confidential Business Information

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

Subtitle B. Textile and Apparel Safeguard Measures

Sec. 321. Commencement of Action for Relief

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

Sec. 322. Determination and Provision of Relief

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

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

Section 322(b) authorizes the President, in the event of an affirmative determination of serious damage or actual threat thereof, to provide import relief to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition. Section 322(b) also specifies the nature of the import relief that the President may impose, to consist of: the suspension of any further reduction in duty provided under Annex 2B of the United States-Singapore Free Trade Agreement; or, an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the normal trade relation/most-favored-nation (NTR/MFN) duty rate imposed on like articles at the time the import relief is provided, or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the United States-Singapore Free Trade Agreement enters into force.

Sec. 323. Period of Relief

This section provides that the initial period for import relief in a textile and apparel safeguard action shall not exceed 2 years. The President is authorized to extend the effective period of such relief under section 323(b) if the President determines that import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition. Section 323(b) also provides that the total period for import relief in a textile and apparel safeguard action, including any extension of such import relief, may not exceed 4 years.

Sec. 324. Articles Exempt From Relief

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

Sec. 325. Rate After Termination of Import Relief

This section provides that the duty rate applicable to a textile or apparel article after termination of the import relief shall be the duty rate that would have been in effect on that date but for the provision of such import relief.

Sec. 326. Termination of Relief Authority

This section provides that the President's authority to provide relief under the textile and apparel safeguard provision terminates after the date that is 10 years after the date on which the provisions of the United States-Singapore Free Trade Agreement relating to trade in textile and apparel goods take effect pursuant to article 5.10 of the United States-Singapore Free Trade Agreement.

Sec. 327. Compensation Authority

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

Sec. 328. Business Confidential Information

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

Subtitle C. Cases Under Title II of the Trade Act of 1974

Sec. 331. Findings and Action on Goods From Singapore

This section authorizes the President, when imposing global safeguard relief under Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.), to exercise the discretion to exclude imports from Singapore that would otherwise be subject to the global safeguard relief, if certain conditions are met. Section 331(a) requires the Commission to find and report to the President whether imports of the article from Singapore are a substantial cause of serious injury or threat thereof. Section 331(b) requires the President, in determining the nature and extent of action to be taken under Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. § 2251 et seq.), to also determine whether imports from Singapore are a substantial cause of the serious injury or threat thereof found by the Commission. If the President determines that imports from Singapore are not a substantial cause of the serious injury or threat thereof found by the Commission, the President may exclude imports from Singapore from any global safeguard relief action taken by the President.

TITLE IV. TEMPORARY ENTRY OF BUSINESS PERSONS

Sections 401 and 402 implement Chapter 11 of the Agreement with respect to providing for the temporary entry of business persons. These provisions are more fully addressed in Part II., Report of the Committee on the Judiciary.

E. CONGRESSIONAL ACTION

On November 16, 2000, President William J. Clinton and Prime Minister Goh Chok Tong of Singapore agreed that in December 2000 the two countries would begin negotiations on a United States-Singapore Free Trade Agreement. On October 1, 2002, President George W. Bush notified the Congress of ongoing negotiations between the United States and Singapore on a free trade agreement. On January 29, 2003, President Bush notified Congress of his intention to enter into the United States-Singapore Free Trade Agreement. President Bush and Prime Minister Goh signed the Agreement on May 6, 2003. The Administration published the Agreement on May 7, 2003, and informally submitted draft implementing legislation to the 108th Congress in June 2003.

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

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

On July 10, 2003, the Senate Committee on Finance conducted an informal consideration of the implementing language submitted by the Administration. In addition, the House Ways and Means Committee and the House Judiciary Committee conducted their informal considerations of the implementing language on July 10, 2003, respectively. On July 14, 2003, the Senate Judiciary Committee notified an informal consideration of the Administration's implementing language.

On July 15, 2003, the Administration formally transmitted to Congress the implementing legislation for the United States-Singapore Free Trade Agreement. On July 15, 2003, Senator Charles E. Grassley introduced legislation in the Senate (S.1417), with Senator Max Baucus and Senator Bill Frist as cosponsors, to implement the Agreement. Congressman Tom DeLay, with Congressman Charles Rangel as a cosponsor, as respective designees for the Speaker of the House and the Minority Leader of the House and by request, introduced the identical legislation in the House (H.R. 2739), on July 15, 2003.

On July 14, 2003, the Senate Judiciary Committee held a public hearing on draft implementing legislation for the proposed United States-Singapore Free Trade Agreement. The Committee received testimony from Regina Vargo (Assistant United States Trade Representative for the Americas), and Ralph Ives (Assistant United States Trade Representative for Southeast Asia, Pacific, and APEC Affairs). The House Judiciary Committee favorably voted out the measure on July 16, 2003, by voice vote.

On July 17, 2003, the Senate Committee on Finance unanimously reported out S.1417, a bill to implement the United States-Singapore Free Trade Agreement, by a vote of 21–0. The House Ways and Means Committee also favorably reported out H.R. 2739 on July 17, 2003, by a vote of 32–5. On the same day, the Senate Judiciary Committee also favorably reported out the measure by a vote of 11–4.

F. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that S.1417 was ordered favorably reported, without amendment, by a unanimous recorded vote with a quorum present on July 17, 2003.

G. REGULATORY IMPACT AND OTHER MATTERS

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

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–04). The committee has reviewed the provisions of S. 1417 as approved by the Committee on July 17, 2003. In accordance with the requirement of Pub. L. No. 104–04, the Committee has determined that the bill contains no intergovernmental mandates, as defined in the UMRA, and would not affect the budgets of State, local, or tribal governments.

PART II. REPORT OF THE COMMITTEE ON THE JUDICIARY

A. BACKGROUND

As provided in Article 11.1 et seq. and Annex 11A, the United States-Singapore Free Trade Agreement (FTA) creates separate categories of entry for citizens of each country to engage in a wide range of business and investment activities on a temporary basis. The FTA addresses four specific categories of temporary nonimmigrant admissions currently governed by U.S. immigration law. They are: business visitors, treaty traders and investors, intra-company transfers, and professional workers. These categories parallel the visa categories commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15) of the Immigration and Nationality Act: B–1 visitors, E treaty traders and investors, L–1 intra-company transferees, and H–1B professional workers.

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

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

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

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

B. IMPLEMENTING LEGISLATION ON TEMPORARY PROFESSIONAL WORKERS

The USTR's legislation that would implement the Singapore agreement was introduced July 15, 2003, as S. 1417. Title IV of this bill would amend several sections of the Immigration and Nationality Act. Foremost, the bills would amend §101(a)(15)(H) of INA to carve out a portion of the H–1B visas—to be designated the H–1B–1 visa—for professional workers entering through the FTAs. In many ways the proposed FTA professional worker visa requirements parallel the H–1B visa requirements, notably having similar educational requirements. Although the implementing language, for the purpose of consistency with the actual FTA, requires "specialized knowledge" instead of "highly specialized knowledge" as stated in the current H–1B statute, the Administration's Statement of Administrative Action (SAA) clearly instructs that specialized knowledge and highly specialized knowledge are to be treated similarly. The bill also amends § 212 of INA to add a labor attestation requirement for employers bringing in potential FTA professional workers that is similar to the H–1B labor attestation statutory requirements. The additional attestation requirements for "H–1B dependent employers" currently specified in § 212 are not included in the labor attestation requirements for employers of the proposed FTA professional workers. The Administration omitted some of the requirements that are due to "sunset" at the end of FY 2003 because it did not know whether the provisions will continue after the current fiscal year, and did not wish to impose harsher conditions on trade partners than the United States currently imposes on other nations. However, nothing in the implementing language precludes application of future restrictions on these FTA visas so long as the restrictions do not conflict with the underlying terms of the FTA.

S. 1417 contains numerical limits of 5,400 new entries under the proposed FTA professional worker visa from Singapore. The bill does not limit the number of times that an alien may renew the FTA professional worker visa on an annual basis, unlike H–1B workers who are limited to a total of 6 years. However, the bar on immigrant intent under INA § 214(b) applies here, whereas such ban does not apply to H–1B visa holders. This means that a holder of the FTA visa must show that he or she intends to return to Singapore and has maintained substantial ties to Singapore. Otherwise, the United States government may deny the renewal request. H–1B visa holders may intend to remain permanently in the United States.

There is also a numerical limitation on the entry of professional workers. The legislation limits the number of Singaporean professional workers coming into the United States to 5,400 annually. Further, the Secretary of Homeland Security may set a cap lower than the 5,400 limit for any given year. Each FTA professional worker visa granted is charged against the total H–1B cap, whether it remains at 195,000, goes down to 65,000, or if a new cap is set after the current law sunsets. Moreover, after the fifth year, a number is charged against the overall H1–B cap for each year that the FTA professional worker visa is extended.

There is little debate on the investor (E) and business visitor (B–1) visa provisions of the FTA. Some members of the Committee have criticized that the intra-company transferee (L–1) provisions of the FTA do not permit labor certification or numerical limitations to be placed on these visas. However, neither the FTA nor S. 1417 precludes imposition of conditions that would be intended to thwart fraud or to punish fraudulent use of this visa category.

C. JUDICIARY COMMITTEE ACTION

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

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

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

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

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

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

II. BUDGETARY IMPACT OF THE BILL

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1417—A bill to implement the United States-Singapore Free Trade Agreement

Summary: S. 1417 would approve the free trade agreement (FTA) between the government of the United States and the government of Singapore that was entered into on May 6, 2003. It would provide for tariff reductions and other changes in law related to implementation of the agreement, such as provisions dealing with dispute settlement, rules of origin, and safeguard measures for textile and apparel industries. The bill also would allow the temporary entry of certain business persons into the United States.

The Congressional Budget Office estimates that enacting the bill would reduce revenues by $55 million in 2004, by $410 million over the 2004–2008 period, and by about $1 billion over the 2004–2013 period, net of income and payroll tax offsets. The bill would not have a significant effect on direct spending or spending subject to appropriation. CBO has determined that S. 1417 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 1417 is shown in the following table.

	By Fiscal Year, in Millions of Dollars—				
	2004	2005	2006	2007	2008
CHANGES IN REVENUES [1]					
Estimated revenues	−55	−80	−86	−92	−98

[1] S. 1417 also would affect direct spending and discretionary spending, but the amounts of those changes would be less than $500,000 a year.

Basis of Estimate

Revenues

Under the United States-Singapore agreement, all tariffs on U.S. imports from Singapore would be phased out over time. The tariffs would be phased out for individual products at varying rates according to one of several different timetables ranging from immediate elimination to partial elimination over 10 years. According to the U.S. International Trade Commission, the U.S. collected $88 million in customs duties in 2002 on about $14.1 billion of imports from Singapore. Of the imports, only $1.3 billion faced non-zero tariff rates. These dutiable imports from Singapore consist mostly of certain electrical machinery, knitted or crocheted apparel, mineral fuels and oils, surgical and precision instruments, and certain nuclear reactor components. Based on these data, CBO estimates that phasing out tariff rates as outlined in the U.S.-Singapore agreement would reduce revenues by $55 million in 2004, by $410 million over the 2004–2008 period, and by about $1 billion over the 2004–2013 period, net of income and payroll tax offsets.

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

Based on current law, S. 1417 would not provide for the assessment of civil monetary penalties on employers for violations of the labor attestation process with respect to certain workers form Singapore. However, if S. 1416, a bill to implement the United States-Chile FTA, were to be enacted prior to this bill, S.1417 would allow the Secretary of Labor to assess such penalties. CBO expects that any additional revenues collected as a result would amount to less than $500,000 in any year.

Direct Spending

Title IV of S. 1417 would permit certain traders and investors form Singapore, and their spouses and children, to enter the United States as nonimmigrants. The Bureau of Citizenship and Immigration Service (BCIS) would charge fee of about $100 to provide nonimmigant visas, so CBO estimates that the agency could collect several million dollars annually in offsetting receipts (a credit against direct spending). The agency is authorized to spend such fees without further appropriation, so the net impact on BCIS spending would not be significant.

However, if S. 1416 (a bill to implement the United States-Chile FTA) were to be enacted prior to this bill, title IV would establish a new nonimmigrant category for certain professional workers from Singapore. The legislation would limit the number of annual entries under this category to 5,400, plus spouses and children. The BCIS would charge fees of about $100 to provide nonimmigrant visas, so CBO estimates that the agency would collect less than $3 million annually in offsetting receipts. Again, the agency is authorized to spend such fees without further appropriation, so the net impact on BCIS spending would not be significant.

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

Spending Subject to Appropriation

Title I of S. 1417 would authorize the appropriation the necessary funds for the Department of Commerce to pay the United States' share of the costs of the dispute settlement procedures established by the agreement. Based on information from the agency, CBO estimates that implementing this provision would cost $100,000 in 2004,and $250,000 in each of the following years, subject to the availability of appropriated funds.

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

Summary of Effect on Revenues and Direct Spending: The overall effects of S. 1417 on revenues and direct spending are shown in the following table.

	By Fiscal Year, In Millions of Dollars—										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in receipts	0	−55	−80	−86	−92	−98	−104	−110	−117	−124	−132
Changes in outlays	*	*	*	*	*	*	*	*	*	*	*

Note.—* = less than $500.000.

Source: the Congressional Budget Office.

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

Estimate Prepared by: Federal Revenues: Annabelle Bartsch. Federal Spending: Dispute Settlements—Melissa Zimmerman; Immigration—Mark Grabowicz, Christi Hawley-Sadoti, and Sunita D'Monte. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

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

III. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF SENATORS FEINSTEIN AND LEAHY

Article 11.1 et seq. and Annex 11A of the United States-Singapore Free Trade Agreement (FTA) contains provisions governing the temporary entry of foreign nationals from Singapore. Specifically, the agreement would require the United States to grant temporary entry to business persons under categories that parallel four nonimmigrant visa categories: the B–1 business visitor visa, E–1 treaty trader or investor visa, the L–1 intra-company transfer visa, and the H–1b professional visa. With the exception of the H–1b visa equivalent, the trade agreement does not impose numerical limits on the number of nonimmigrant visas that may be issued in a given year. In fact, the trade agreement expressly prohibits numerical limits on the visa categories. In addition, neither party to the agreement would be permitted to impose labor certification tests or other similar conditions of entry upon foreign nationals of Singapore.

On July 15, 2003, despite concerns expressed by members of Congress over the immigration provisions, the President transmitted to Congress legislation to implement the U.S.-Singapore agreement. The legislation was subsequently introduced in the Senate as S. 1417. Title IV of the legislation establishes a new H–1B(1) category for the temporary entry of foreign professionals from Singapore.

BINDING IMMIGRATION POLICY SHOULD NOT BE ENACTED IN TRADE AGREEMENTS

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

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

As the Court found in *Galvan* v. *Press,* 347 U.S. 522, 531 (1954), "that the formulation of policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." And, as the Court found in *Kleindienst* v. *Mandel*, 408 U.S. 753, 766 (quoting *Bountilier* v. *INS*, 387 U.S. 118, 123 (1967)), "[t]he Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.'"

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

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

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

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

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

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

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

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

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

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

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

FREE TRADE VISAS SHOULD NOT BE INDEFINITELY RENEWABLE

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

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

INSUFFICIENT PROTECTIONS FOR WORKERS—BOTH DOMESTIC AND FOREIGN TEMPORARY

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

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

Despite these concerns, the U.S. Trade Representative has seen fit to push through a free trade agreement with immigration provisions that significantly weaken the worker protections under current immigration law. The provisions would expand the types of occupation currently covered under H–1B to include: management consultants, disaster relief claims adjusters, physical therapists, and agricultural managers—professions that do not require a bachelor's degree. (U.S.-Singapore Free Trade Agreement, Appendix 11A.2, p. 131.) Nor would employers be required to demonstrate a shortage of workers in these professions before hiring foreign nationals under the agreement. Essentially, these provisions would open the door to the inclusion of new occupations in the trade agreement that are not currently included in the H–1b program. The definition of "specialty occupation" in the H–1b program is specifically designed to ensure that employers do not abuse the H–1b program to undercut American workers in occupations where there is no skill shortage. The H–1b program defines a "specialty occupation" as one that requires the application of a "body of highly specialized knowledge." The free trade agreement with Singapore and implementing legislation, on the other hand, broadens the definition of "specialty occupation" to include any job that requires the application "of a body of specialized knowledge." Thus, the agreement omits the important qualifier that the intending foreign professional's knowledge be highly specialized, thus lowering the standard for admission. This is unacceptable.

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

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

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

NO LIMITATIONS ON OTHER VISA CATEGORIES

While the Administration has included a cap of 5,400 on the foreign professional visa category, there are other categories under which an unlimited number of foreign nationals from Singapore could enter: the B–1 visitor visa; the E-treaty/investor visas; and L–1 intracompany visas (which have recently been the subject of investigations). None of these categories are numerically limited under the agreement, and once enacted, Congress may not subsequently impose caps on these categories for nationals entering pursuant to this agreement.

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

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

> (a) As a condition for temporary entry under paragraph 1, require labor certifications, or other procedures of similar effect; or
>
> (b) Impose or maintain any numerical restriction relating to temporary entry under paragraph 1." [U.S.-Singapore Free Trade Agreement, Chapter 11, Annex 11A, section 3, p. 125.]

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

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

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

DIANNE FEINSTEIN.
PATRICK J. LEAHY.

ADDITIONAL VIEWS OF SENATOR KENNEDY

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

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

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

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

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

EDWARD M. KENNEDY.

ADDITIONAL VIEWS OF SENATOR KYL

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

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

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

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

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

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

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

JON KYL.

ADDITIONAL VIEWS OF SENATOR SESSIONS

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

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

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

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

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

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

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

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

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

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

I am concerned with the current unemployment rate among U.S. workers and I am dedicated to preserving their jobs. The abuse surrounding some immigration visas is contributing to a record level of unemployment for U.S. high-tech workers.

I welcome, when appropriate, foreign industries within our borders, and, when appropriate, I fully support foreign workers coming here to work. I believe the only way to protect the job market for American workers is to preserve Congress' plenary power to make laws that affect the ability of foreign workers to displace American workers from their jobs.

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

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

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

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

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

JEFF SESSIONS.

ADDITIONAL VIEWS OF SENATOR CHAMBLISS

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

Senator CHAMBLISS. Mr. Chairman, as Chairman of the Immigration Subcommittee, Senator Kennedy and I have a hearing set next week to discuss H1–B and L1 visa programs. There is the potential that after that hearing and subsequent thereto and other hearings or whatever, we may be talking about reducing the numbers available under those programs, for various reasons.

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

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

SAXBY CHAMBLISS.

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

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

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * * * *

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

* * * * * * *

SECTION 592 OF THE TARIFF ACT OF 1930

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

(a) * * *

* * * * * * *

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

(7) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENT.—

(A) An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Singapore Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim that a good qualifies as an originating good.

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SECTION 202 OF THE TRADE ACT OF 1974

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

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

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

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SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

(g)(1) * * *

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[The purported changes made to paragraph (8) of section 214(g) by this bill are shown below. Section 402(a)(2)(B) of H.R. 2738 inserts at the end of subsection (g) a new paragraph (8), which is presumed to take effect prior to the execution of these amendments.]

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

(8)(A) The agreements referred to in section 101(a)(15)(H)(i)(b1) are—

(i) the United States-Chile Free Trade Agreement; and

(ii) the United States-Singapore Free Trade Agreement.

(B)(i) * * *

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

(ii) The annual numerical limitations described in clause (i) shall not exceed—

(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and

(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.

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