June 21, 2004

THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION ACT

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action is submitted to the Congress in compliance with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act") and accompanies the implementing bill for the United States-Australia Free Trade Agreement ("Agreement"). The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on May 18, 2004.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement. The Agreement does not change the provisions of any agreement the United States has previously negotiated with Australia.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One and Twenty through Twenty-Three) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

Chapters:
One (Establishment of a Free Trade Area and Definitions)
Twenty (Transparency)
Twenty-One (Institutional Arrangements and Dispute Settlement)
Twenty-Two (General Provisions and Exceptions)
Twenty-Three (Final Provisions)

1. Implementing Bill

a. Congressional Approval

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

b. Entry into Force

Article 23.4 of the Agreement requires the United States and Australia to exchange written notifications that their respective internal requirements for the entry into force of the Agreement have been fulfilled. The exchange of notifications is a necessary condition for the Agreement's entry into force. Section 101(b) of the implementing bill authorizes the President to exchange notes with Australia to provide for entry into force of the Agreement with respect to the United States on or after January 1, 2005. The exchange of notes is conditioned on a determination by the President that Australia has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force. Certain rules pertaining to intellectual property rights become effective no later than two years after the Agreement's entry into force.

c. Relationship to Federal Law

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

d. Relationship to State Law

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor and environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the Agreement, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the Agreement (for example, Chapter Thirteen, relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter Thirteen exempt existing inconsistent (*i.e.*, "non-conforming") measures.

Given the provision of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Agreement's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

e. Private Lawsuits

Section 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature may interfere with the Administration's conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

f. Implementing Regulations

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

g. Dispute Settlement

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty-One of the Agreement. This provision enables the United States to implement its obligations under Article 21.3.1(a) of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the North American Free Trade Agreement ("NAFTA"), and the U.S.-Canada Free Trade Agreement. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter Twenty-One are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

h. Effective Dates

Section 106(b) of the bill provides that the first three sections of the bill as well as Title I of the bill go into effect when the bill is enacted into law.

Section 106(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement enters into force. Section 106(c) provides that the provisions of the bill and the amendments to other statutes made by the bill will cease to be effective on the date on which the Agreement terminates.

2. Administrative Action

No administrative changes will be necessary to implement Chapters One, Twenty-Two, and Twenty-Three.

Article 20.1.1 of the Agreement requires each government to designate a contact point to facilitate bilateral communications regarding the Agreement. The Office of the United States Trade Representative ("USTR") will serve as the U.S. contact point for this purpose.

Before the Agreement enters into force, the United States and Australia will agree on a "contingent list" of qualified individuals to serve on dispute settlement panels if the Parties cannot agree on panelists. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate ("Trade Committees") as it develops the contingent list.

Chapter Two (National Treatment and Market Access for Goods)

1. Implementing Bill

a. Proclamation Authority

Section 201(a) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Two of the Agreement through the application or elimination of customs duties and tariff-rate quotas. Section 201(a) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 2.3, 2.5, and 2.6, and Annex 2-B of the Agreement.

The proclamation authority with respect to Article 2.3 authorizes the President to provide for the continuation, phase-out and elimination, according to the U.S. schedule in Annex 2-B, of customs duties on imports from Australia that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 2.5 and 2.6 authorizes the President to provide for the elimination of duties on particular categories of imports from Australia. Article 2.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 2.6 pertains to the importation of goods: (1) returned to the United States after undergoing repair or alteration in Australia; or (2) sent from Australia for repair or alteration in the United States.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104(a) of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement with Australia under Annex 2-B;
- 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 Australia provided by the Agreement.

Section 104(a) of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the U.S. International Trade Commission ("ITC") on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the Trade Committees to consult with the President on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104(a) of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with Australia under Article 4.2.3 of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

b. Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 2.12 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Chapter Five of the Agreement. Processing of goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on such non-originating imports will not be used to finance the processing of originating imports.

2. Administrative Action

As discussed above, section 201(a) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 2.5 (temporary admission of certain goods) and Article 2.6 (repair or alteration of certain goods) of the Agreement. Implementing the proclamation will require regulations, which will be issued by the Secretary of the Treasury.

Annex 2-C of the Agreement relates to market access for pharmaceuticals. Under this Annex, U.S. federal health care programs will apply transparent procedures if they list new pharmaceuticals or indications for reimbursement purposes, or set the amount of reimbursement for pharmaceuticals through other than market-based means. This Annex also establishes a baseline for dissemination of information by pharmaceutical manufacturers to health professionals and consumers over the Internet, and the United States and Australia are free to permit dissemination of additional information. Chapter Fifteen of the Agreement (and not Annex 2-C) addresses government procurement of pharmaceutical products, including formulary development and management. No change in U.S. regulation or practice is required to implement the Agreement's provisions described in this paragraph.

Chapter Three (Agriculture)

1. Implementing Bill

Section 202 of the bill implements the agricultural safeguard provisions of Article 3.4 and Annex 3-A of the Agreement. Article 3.4 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports from Australia of an agricultural good listed in the U.S. schedule to Annex 3-A of the Agreement. The U.S. schedule, in turn, provides for three different types of agricultural safeguards. The first (set out in Section A of Annex 3-A) applies to horticulture goods specified in the Annex. The second (set out in Section B of Annex 3-A) applies to certain beef goods imported into the United States above specified quantities during the period from January 1, 2013 through December 31, 2022. The third (set out in Section C of Annex 3-A) applies to the same categories of beef goods imported into the United States above specified quantities and the monthly average index price in the United States falls below the specified "trigger" price beginning January 1, 2023.

Section 202(a) of the bill provides the overall contour of the safeguard rules, including definitions of terms used in respect of the three safeguard provisions. Section 202(a)(2) defines the applicable normal trade relations/most-favored-nation ("NTR/MFN") rate of duty for the purposes of the agricultural safeguards. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the U.S. schedule may not exceed the general NTR/MFN rate of duty.

Section 202(a)(3) defines the "schedule rate of duty" for purposes of the horticulture safeguard and the quantity-based beef safeguard as the rate of duty for a good set out in the U.S. schedule to Annex 2-B of the Agreement.

Section 202(a)(4) defines "safeguard good" for the purpose of this subsection.

Section 202(a)(5) of the bill implements Article 3.4.3 of the Agreement by establishing that no additional duty may be applied on a good if, at the time of entry, the good is subject to a measure under the bilateral safeguard mechanism established under Subtitle A of Title III of the bill or under the safeguard procedures set out in Chapter 1 of Title II of the Trade Act of 1974.

Section 202(a)(6) of the bill provides that the agricultural safeguard provision in Section A of Annex 3-A of the Agreement for horticulture goods and the quantity-based beef safeguard provision in Section B of Annex 3-A cease to apply with respect to a good on the date on which duty free treatment must be provided to that good under the Agreement. No beef product receives duty free treatment prior to January 1, 2023. (The safeguard measure set out in Section C of Annex 3-A is a function of both the quantity of imports and the average price of certain goods in the U.S. market beginning January 1, 2023 and has no termination date.)

Section 202(a)(7) implements Article 3.4.5 of the Agreement by directing the Secretary of the Treasury to notify Australia and provide Australia with supporting data within 60 days of assessing agricultural safeguard duties on a good.

Section 202(b) of the bill contains provisions regarding the imposition of safeguard measures on imports of horticulture goods specified in Section A of Annex 3-A. Section 202(b)(1) contains definitions of key terms, including "horticulture safeguard good," "unit import price," and "trigger price."

Section 202(b)(2) establishes the basic authority for such safeguards. Section 202(b)(3) of the bill explains how the additional duties are to be calculated. The United States may apply the additional duties to shipments of any such good whose price is below the threshold ("trigger price") for the good set out in Section A of Annex 3-A. The rate of additional duty under the safeguard increases as the difference increases between the unit import price of a shipment and a trigger price specified in Annex 3-A.

Section 202(c) of the bill contains provisions regarding the imposition of safeguard measures on imports of beef goods of Australia based on the *quantity* of imports during the period January 1, 2013 through December 31, 2022. Section 202(c)(1) defines the term "beef safeguard good" for purposes of this subsection. Section 202(c)(2) establishes the basic authority for such measures and the circumstances under which they must be imposed. Section 202(c)(3) explains how the additional duties are to be calculated. Section 202(c)(4) provides that the United States Trade Representative may waive the application of Section 202(c) if he determines that extraordinary market conditions demonstrate that a waiver would be in the U.S. national interest, after satisfying the requirements set forth in subparagraph (B) of this subsection. Under subparagraph (B), the United States Trade Representative is required to notify the Trade Committees promptly after receipt of a request for a waiver from an agency, member of Congress or interested person, and consult with the appropriate private sector advisory committees and the Trade Committees regarding the reasons supporting a determination

to grant a waiver and the proposed scope and duration of any waiver prior to making a determination under this subsection. Such consultations shall occur no less than five business days prior to the effective date of a waiver. Upon granting a waiver, the United States Trade Representative must notify the Secretary of the Treasury of the effective dates of any such waiver and publish notice in the *Federal Register*. Finally, section 202(c)(5) provides that quantity-based beef safeguard measures are applicable during the period January 1, 2013 through December 31, 2022, corresponding to years nine through 18 of the Agreement, which is based on entry into force of the Agreement on January 1, 2005.

Section 202(d) of the bill contains provisions regarding the imposition of safeguard measures on imports of beef goods of Australia that exceed certain quantities based on *price*, as provided for in Section C of Annex 3-A. Section 202(d)(1) defines certain terms, including "beef safeguard good," "monthly average index price," and "24-month trigger price" for purposes of this subsection. Section 202(d)(2) establishes the basic authority for such measures and the circumstances under which they may be imposed. Section 202(d)(3) explains how the additional duties are to be calculated. Section 202(d)(4) provides that such safeguards may only be applied if aggregate import quantities in the calendar year in question have reached certain levels. Section 202(d)(5) provides that the United States Trade Representative may waive the application of Section 202(d) if he determines that extraordinary market conditions demonstrate that a waiver would be in the U.S. national interest, after satisfying the requirements of subparagraph (B) of this subsection. Under subparagraph (B), the United States Trade Representative is required to notify the Trade Committees promptly after receipt of a request for a waiver from an agency, member of Congress or interested person, and consult with the appropriate private sector advisory committees and the Trade Committees regarding the reasons supporting a determination to grant a waiver and the proposed scope and duration of any waiver prior to making a determination under this subsection. Such consultations shall occur no less than five business days prior to the effective date of a waiver. Upon granting a waiver, the United States Trade Representative must notify the Secretary of the Treasury of the effective dates of any such waiver and publish notice in the *Federal Register*. Section 202(d)(6) provides that price-based beef safeguard measures are applicable beginning on January 1, 2023, which is based on entry into force of the Agreement on January 1, 2005. The Agreement provides no termination date for this type of agricultural safeguard measure.

2. Administrative Action

As noted above, the Secretary of the Treasury is authorized to issue regulations to implement the safeguard provisions of section 202. It is the Administration's intent that these safeguard measures will be applied whenever the conditions specified in the Agreement exist. In the case of the price-based beef safeguard set out in section 202(d) of the bill, identifying the existence of such conditions will require the Bureau of Customs and Border Protection to rely on certain pricing information reported by the Department of Agriculture. Section 202(d)(1)(C) refers to "the simple average, as determined by the Secretary of Agriculture, for a calendar month of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1-3 Central U.S. 600-750 lbs., or its equivalent, as such simple average is reported by the

Agricultural Marketing Service of the Department of Agriculture in Report LM_XB459" or any equivalent report.

Currently, the Agricultural Marketing Service ("AMS") issues a regular weekly report in which it reports a simple average of the preceding week's five daily prices for National Boxed Beef Cut-Out Value Select 600-750 lbs. This simple average is equivalent to a simple average of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1-3 Central U.S. 600-750 lbs. These daily averages are found in AMS report LM_XB459. Report LM_XB459 is not printed in hard copy, but can be accessed via the Internet at http://www.ams.usda.gov/mnreports/lm_xb459.txt. Currently, report LM_XB459 does not contain monthly average prices for National Boxed Beef Cut-Out Value Select 600-750 lbs. Beginning on or before January 1, 2022, AMS will calculate on a monthly basis a simple average of the daily National Boxed Beef Cut-Out Value Select 600-750 lbs. prices for the preceding calendar month and will transmit this special report in a timely manner to the Bureau of Customs and Border Protection for the purpose of implementing the price-based beef safeguard.

Although Section C of Annex 3-A refers to export certificates issued by the government of Australia, in applying the authority provided under subsections 202(c) and (d), the total quantity of beef goods imported into the United States from Australia in specified tariff categories, whether or not such goods are accompanied by a certificate issued by Australia, will be counted toward meeting the quantity-based element of these safeguards. Under subsection (d), once the quantity threshold of the safeguard is crossed, additional duties will be applied to any imports once the trigger price element of this safeguard measure, which is set out in the bill, is met.

Chapter Four (Textiles and Apparel)

1. Implementing Bill

a. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to bilateral trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of origin and to prevent circumvention of laws, regulations, and procedures affecting such trade. Article 4.3 of the Agreement provides for facility inspections, examinations of records and other forms of verification to determine the accuracy of claims of origin for textile and apparel goods and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile and apparel goods.

Under Articles 4.3.2 and 4.3.3, the United States may make a request to Australia that, Australia, the United States or both, conduct a verification with respect to an Australian exporter or producer. The object of a verification under Article 4.3.2 is to determine that a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 4.3.3 is to determine that an exporter or producer is complying with applicable customs laws, regulations,

and procedures and that claims of origin for textile or apparel goods exported or produced by that person are accurate.

Under Article 4.3.7 of the Agreement, the United States may take appropriate action during a verification, including suspending the application of preferential treatment to textile or apparel goods exported or produced by the person subject to the verification. Under Article 4.3.8, the United States also may take appropriate action if, after 12 months, it is unable to make the requisite determination. Generally speaking, there are two situations in which the United States would be unable to make the required determination. One would be, *e.g.*, due to lack of cooperation on the part of the exporter or producer. The second would be when the United States has sufficient information, and based on that information determines that: (1) a claim of origin is not accurate; or (2) an exporter or producer is not complying with applicable customs laws, regulations, and procedures, and therefore that claims of origin for textile or apparel goods produced by that person are not accurate.

Under current law, the Secretary of the Treasury may make a request to Australia to conduct a verification under Article 4.3 of the Agreement. Section 206(a) authorizes the President to direct the Secretary of the Treasury to take "appropriate action" while a verification requested by the Secretary is being conducted. The purpose of such verification is to determine compliance with applicable customs law or to determine the accuracy of a claim that a particular good is an originating good or a "good of Australia." Under section 206(b), such action may include, but is not limited to, suspension of liquidation of entries of textile or apparel goods exported or produced by the person that is the subject of the verification.

Under section 206(c), if the Secretary is unable to confirm within 12 months of making a verification request that a claim of origin for a good is accurate or, more generally, that an Australian exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, the President may determine what further "appropriate action" to take. Under section 206(d), such further action may include publishing the name and address of the person subject to the verification and, in the case of a verification under Article 4.3.3 of the Agreement, denying preferential treatment under the Agreement to any textile or apparel goods exported or produced by the person subject to the verification, and denying entry of such goods into the United States. In the case of a verification under Article 4.3.2 of the Agreement, the further action referred to in section 206(d) of the bill may include denying preferential treatment to a textile or apparel good for which a claim has been made that is the subject of the verification and denying entry of such a good into the United States. Such further appropriate action may remain in effect until the Secretary receives information sufficient to make a determination under section 206(a) or until such earlier date as the President may direct.

b. Textile and Apparel Safeguard

Article 4.1 of the Agreement establishes a special procedure and makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods that enjoy preferential duty rates under

the Agreement. The Administration does not anticipate that the Agreement will result in damaging increases in textile or apparel imports from Australia. Nevertheless, the Agreement's textile and apparel safeguard procedure will ensure that relief is available, if needed.

The safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, textile or apparel goods from Australia are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 4.1 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. NTR/MFN duty rate for the good or the U.S. NTR/MFN duty rate in effect on the day before the Agreement entered into force.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile and apparel safeguard provisions.

Section 321(a) of the bill provides that an interested party may file with the President a request for a textile or apparel safeguard measure. The President is to review a request initially to determine whether to commence consideration of the request on its merits.

Section 321(b) of the bill allows an interested party filing such a request to allege that "critical circumstances" exist such that to delay providing relief would cause damage to a U.S. industry that would be difficult to repair. If the President finds that such critical circumstances exist, the President may provide provisional relief, as described below.

Under section 321(c), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of business confidential information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

If the President determines under section 321 that a request contains the information necessary for it to be considered, then section 322 sets out the procedures to be followed in considering the request. Section 322(a) of the bill provides for the President to determine whether, as a result of the elimination of a duty provided for under the Agreement, an Australian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. This determination corresponds to the determination required under Article 4.1.1 of the Agreement. Section 322(a) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 4.1.2 of the Agreement.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in duties to the lower of: (1) the NTR/MFN duty rate in place for the textile or apparel article at the time the relief is granted; or (2) the NTR/MFN duty rate for that article on the day before the Agreement enters into force.

Section 322(c) of the bill concerns provisional relief. Where a requester has alleged the existence of critical circumstances, section 322(c) provides that within 60 days of filing of the request the President shall determine whether there is clear evidence of the existence of such circumstances. If the determination is affirmative, the President may provide provisional relief for a period of up to 200 days. If the President provides such provisional relief, then liquidation of entries of the articles subject to such relief shall be suspended during the period of such relief. Section 322(c) further provides for circumstances triggering the termination of the provisional relief and actions to be taken upon such termination.

Section 323 of the bill provides that the maximum period of relief (including provisional relief) under the textile or apparel safeguard shall be two years. However, the President may extend the period of import relief for an additional two years if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition. A safeguard measure may not be imposed for an aggregate period greater than four years.

Section 324 of the bill provides that relief may not be granted to an article under the textile or apparel safeguard if relief previously has been granted to that article under: (1) these special provisions; (2) Chapter Nine of the Agreement (corresponding to Subtitle A to Title III of the bill); or (3) chapter 1 of title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date of termination of import relief, imports of the textile or apparel article that was subject to the safeguard action will return to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile or apparel safeguard with respect to any Australian article will expire 10 years after duties on the article are eliminated.

Under Article 4.1.7 of the Agreement, if the United States provides relief to a domestic industry under the textile or apparel safeguard, it must provide Australia "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the [safeguard] action." If the United States and Australia are unable to agree on trade liberalizing compensation, Australia may increase customs duties equivalently on U.S. goods. The obligation to provide compensation terminates upon termination of the safeguard relief.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter

1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement's textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that business confidential information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting business confidential information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

Administrative Action

a. Enforcement of Textile and Apparel Rules of Origin

Under section 206 of the bill, U.S. customs officials may request Australia to initiate verifications and work with Australian officials in conducting them. Following a U.S. request for a verification, the Committee for the Implementation of Textile Agreements ("CITA"), an interagency entity created by Executive Order 11651 that carries out certain textile trade policies for the United States by delegation of authority from the President, may direct U.S. officials to take appropriate action described in section 206(b) of the bill while the verification is being conducted. U.S. customs officials will determine whether the exporter or producer that is subject to the verification is complying with applicable customs rules, and whether statements regarding the origin of textile or apparel goods exported or produced by that firm are accurate. If U.S. customs officials determine that an exporter or producer is not complying with applicable customs rules or that it is making false statements regarding the origin of textile or apparel goods, they will report their findings to CITA. Similarly, if U.S. customs officials are unable to make the necessary determination (*e.g.*, due to lack of cooperation by the exporter or producer), they will report that fact to CITA. CITA may direct U.S. officials to take appropriate action described in section 206(d) in the case of an adverse determination or a report that customs officials are unable to make the necessary determination. If the appropriate action includes denial of preferential treatment or denial of entry, CITA will issue an appropriate directive.

Section 206 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 4.3 of the Agreement.

b. Textile and Apparel Safeguard

The function of receiving requests for textile and apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a), and providing relief under section 322(b) and (c) will be performed by CITA, pursuant to a delegation of the President's authority under the bill. CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b) and (c).

Chapter Five (Rules of Origin)

1. Implementing Bill

a. General

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Five of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good of Australia for the purposes of this bill would not necessarily be a good of or import from Australia for the purposes of other U.S. laws or regulations.

Under the general rules, there are four basic ways for a good of Australia to qualify as an "originating good", and therefore be eligible for preferential treatment when it 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 Australia, the United States, or both." The term "good wholly obtained or produced entirely in the territory of Australia, the United States, or both" is defined in section 203(n)(5) of the bill and includes, for example, minerals extracted in either country, animals born and raised in either country, and waste and scrap derived from production of goods that takes place in the territory of either or both countries.

The term "good wholly obtained or produced entirely in the territory of Australia, the United States, or both" includes "recovered goods." These are parts resulting from the disassembly of used goods, which are brought into good working condition, in order to be combined with other recovered goods and other materials to form a "remanufactured good." The term "remanufactured good" is separately defined in section 203(n)(19) to mean an industrial good assembled in the territory of Australia or the United States and falling within Chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032 (with the exception of goods under heading 8418, 8516, or any of headings 8701 through 8706) that: (1) is comprised entirely or partially of recovered goods; (2) has a similar life expectancy to, and meets the same performance standards as, like a good that is new; and (3) enjoys a similar factory warranty to such a like good.

Second, the general rules of origin provide that a good is an "originating good" if the good is produced in the United States, Australia, or both, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their classification to change and to meet other requirements, as specified in Annex 4-A or Annex 5-A of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in the United States or Australia or meeting regional value content requirements, sometimes in conjunction with changes in tariff classification.

Third, the general rules of origin provide that a good is an "originating good" if the good is produced entirely in the territory of Australia, the United States, or both exclusively from materials that themselves qualify as originating goods.

Fourth, the general rules of origin provide that a good is an "originating good" if it meets specific requirements set forth in other provisions of section 203 of the bill.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement's specific requirements to qualify as an originating good. For example, section 203(c) 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 change in tariff classification. Section 203(e) implements provisions in Annex 5-A of the Agreement that require certain goods to have at least a specified percentage of "regional value content" to qualify as "originating goods." It prescribes alternative methods for calculating regional value content, as well as a specific method in the case of certain automotive goods. Other provisions in section 203 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials, as well as a variety of other matters.

b. Proclamation Authority

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 4-A and Annex 5-A of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(2) gives authority to the President to modify certain of the Agreement's specific origin rules by proclamation, subject to the consultation and layover provisions of section 104(a) of the bill. (*See* discussion under item 1.a of Chapter Two, above.)

Various provisions of the Agreement expressly contemplate modifications to the rules of origin. Article 5.16.2 calls for the two governments to consult regularly after the Agreement's entry into force to discuss necessary amendments to Chapter Five and Annex 5-A. In addition, as noted above, Article 4.2.3 calls for the United States and Australia to consult at either government's request to consider whether rules of origin for particular textile and apparel goods should be revised in light of the availability of fibers, yarns, or fabrics in their respective territories.

Section 203(o)(2) of the bill expressly limits the President's authority to modify by proclamation specific rules of origin pertaining to textile and apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 4-A of the Agreement). Those rules of origin may be modified by proclamation in only two circumstances: first, to implement an agreement with Australia pursuant to Article 4.2.5 of the Agreement to address commercial availability of particular fibers, yarns, or fabrics; and second, within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors.

c. Correction of Invalid Claims

Under Article 5.13.4(a) of the Agreement, neither government may 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. Article 5.13.4(b) provides for importers to have at least a 12-month grace period after submitting an invalid claim in which to correct it. Section 205 of the bill implements this requirement for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)).

2. Administrative Action

The rules of origin in Chapter Five of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in Australia and the United States. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (1) wholly produced or obtained in one or both countries; or (2) undergoes both substantial processing and substantial change in one or both countries.

a. Claims for Preferential Treatment

Section 207 of the bill authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rule of origin and customs user fee provisions. The Department of the Treasury will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. Under Article 5.12.1 of the Agreement, an importer may claim preferential treatment for particular goods if the importer knows or possesses information that the goods satisfy the Agreement's rules of origin. Under Article 5.12.2, an importer may be requested to explain in writing the basis for its claim. Article 5.13 requires that a claim for preferential treatment be granted unless customs officials have information that the claim is invalid or the importer fails to satisfy the Agreement's origin rules. Article 5.13 also requires that a written determination, with factual and legal findings, be provided if a claim is denied.

b. Verification

Under Article 5.15, customs officials may use a variety of methods to verify claims that goods imported from Australia satisfy the Agreement's rules of origin. Article 4.3 sets out special procedures for verifying claims that textile or apparel goods imported from Australia meet the Agreement's origin rules. U.S. officials will carry out verifications under Articles 5.15 and 4.3 of the Agreement pursuant to authorities under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

Chapter Six (Customs Administration)

1. Implementing Bill

No statutory changes will be required to implement Chapter Six.

2. Administrative Action

a. Inquiry Point

Article 6.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. The U.S. Bureau of Customs and Border Protection (BCBP) will serve as the U.S. inquiry point for this purpose. Consistent with Article 6.1.2, the BCBP will post information on the Internet at "www.cbp.gov" on how interested persons can make customs-related inquiries.

b. Advance Rulings

Treasury regulations for advance rulings under Article 6.3 of the Agreement (on classification, valuation, origin, and qualification as an "originating good") will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the Agreement will be issued within 120 days of receipt of all information reasonably required to process the application for the ruling.

Chapter Seven (Sanitary and Phytosanitary Measures)

No statutory or administrative changes will be required to implement Chapter Seven.

Chapter Eight (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter Eight.

2. Administrative Action

Article 8.9 of the Agreement calls for each government to designate an official to coordinate with interested parties in its territory on bilateral issues and initiatives regarding technical barriers to trade ("TBT"), and to communicate with the other government on such

matters. A USTR official for TBT matters or trade relations with Australia will serve as the U.S. Chapter Eight coordinator.

Chapter Nine (Safeguards)

1. Implementing Bill

Subtitle A of Title III of the bill implements in U.S. law the bilateral safeguard provisions set out in Chapter Nine of the Agreement. Subtitle C of Title III of the bill implements the global safeguard provisions set out in Chapter Nine of the Agreement. (As discussed under Chapter Four, above, Subtitle B of Title III of the bill implements the textile and apparel safeguard provisions of the Agreement.)

a. Bilateral Safeguard Measures

Sections 311 through 316 of the bill authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission ("ITC"), to suspend duty reductions or impose duties temporarily at NTR/MFN rates on "Australian articles" when, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974.

Section 301(1) defines the term "Australian article" for purposes of the safeguard provisions to mean a good qualifying as an "originating good" under section 203(b) of the bill.

Section 301(2) defines the term "Australian textile or apparel article" as an article listed in the Annex to the World Trade Organization ("WTO") Agreement on Textiles and Clothing that is also an Australian article, as defined in section 301(1).

Section 311 provides for the filing of petitions with the ITC and for the ITC to conduct bilateral safeguard investigations. Section 311(a)(1) provides that a petition requesting a bilateral safeguard action may be filed with the ITC by an entity that is "representative of an industry." As under section 202(a)(1) of the Trade Act of 1974, the term "entity" is defined to include a trade association, firm, certified or recognized union, or a group of workers.

In addition, section 311(a)(2) 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.

Section 311(a)(3) requires that any claim of "critical circumstances" with respect to a surge of imports from Australia be included in the petition for relief. A claim of critical circumstances is a necessary element in a claim for provisional relief. It also is a necessary

element in a claim for provisional relief under section 202(d)(2) of the Trade Act of 1974, which is made applicable to bilateral safeguards under the Agreement through section 311(c) of the bill.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in bilateral safeguard proceedings.

Section 311(c) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of "substantial cause" in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the provisional relief provisions in section 202(d), the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section Australian articles that have been the basis previously for according relief to an industry, after the Agreement's entry into force, under Subtitle A of Title III of the bill.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation (or 180 days if critical circumstances are alleged).

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that may be recommended by the ITC is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC's report must include: (1) the ITC's determination under section 312(a) and the reasons supporting it; (2) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (3) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to publish its report promptly and to publish a summary of the report in the *Federal Register*.

Under section 313(a) of the bill, the President is directed, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative determination or a determination that the President may consider to be an affirmative determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC 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 relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

- a suspension of further reductions in the rate of duty to be applied to the articles in question; or

- an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR/MFN rate or the NTR/ MFN rate of duty imposed on the day before the Agreement entered into force.

Section 313(c)(1) also sets out a special rule for duties applied to an article on a seasonal basis.

Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the initial period for import relief under the bilateral safeguard may not exceed two years. The President may extend the period of import relief if the President determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination by the ITC to the same effect. However, the aggregate period of import relief, including extensions, may not exceed four years.

Section 313(e) specifies the duty rate to be applied to Australian articles after termination of a bilateral safeguard action. On the termination of relief, the rate of duty for the remainder of the calendar year is to be the rate that was scheduled to have been in effect one year after the initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty:

- at the rate called for under the U.S. duty phase-out schedule; or

- in a manner that eliminates the tariff in equal annual stages ending on the date set out in that schedule.

Section 313(f) exempts from relief any article that is, at the time of the President's determination on whether to provide relief, subject to import relief under the textile or apparel safeguard, set out in Subtitle B of Title III of the bill, or under one of the agricultural safeguards, set out in Section 202(b), (c), and (d) of the bill. Section 313(f) also exempts from relief any article that has been, at any time after entry into force of the Agreement, subject to import relief under Subtitle A of Title III of the bill.

Section 314 provides that the President's authority to take action under the bilateral safeguards provision expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds 10 years. In such case, no relief may be provided after expiration of the period for elimination of duties. The President may take action under the bilateral safeguards provision after the period provided for, but only to the extent the President determines that the Government of Australia consents.

Section 315 allows the President to provide trade compensation to Australia, as required under Chapter Nine of the Agreement, when the United States imposes relief through a bilateral safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to bilateral safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958.

b. Global Safeguard Measures

Section 331 of the bill implements the global safeguard provisions of Article 9.5 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports from Australia when certain conditions are present.

Section 331(a) requires the ITC to make special findings with respect to imports from Australia if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974. In that case, the ITC must find and report to the President whether imports from Australia are a substantial cause of serious injury or threat thereof. Under section 331(b), if the President in turn finds that imports from Australia are not a

substantial cause of serious injury, the President may exclude imports from Australia from a global safeguard action. The term "imports from Australia" as used in this section differs from the terms "originating good" and "Australian article" used elsewhere in the implementing bill. The Administration intends to interpret "imports from Australia" in the same manner as it interprets "imports from Singapore" as provided in section 331 of the United States-Singapore Free Trade Area Implementation Act and "imports from a NAFTA country" as provided in section 312 of the North American Free Trade Agreement Implementation Act.

2. Administrative Action

No administrative changes will be required to implement Chapter Nine.

Chapter Ten (Cross-Border Trade in Services)

No statutory or administrative changes will be required to implement Chapter Ten.

Chapter Eleven (Investment)

1. Implementing Bill

No statutory changes will be required to implement Chapter Eleven.

2. Administrative Action

Article 11.16.1 of the Agreement contemplates the possibility that at some point in the future there may be a change in circumstances affecting the settlement of disputes related to investment in the territory of one country by investors of the other country. Where either the United States or Australia believes that such a change in circumstances has occurred, it may request consultations with the other country on whether to amend the Agreement to provide for investor-state arbitration.

Chapter Twelve (Telecommunications)

No statutory or administrative changes will be required to implement Chapter Twelve.

Chapter Thirteen (Financial Services)

No statutory or administrative changes will be required to implement Chapter Thirteen.

Chapter Fourteen (Competition Policy)

No statutory or administrative changes will be required to implement Chapter Fourteen.

Chapter Fifteen (Government Procurement)

1. Implementing Bill

Chapter Fifteen of the Agreement establishes rule that certain government entities, listed in Annex 15-A of the Agreement, must follow in procuring goods and services. The Chapter's rules will apply whenever these entities undertake procurements valued above thresholds specified in Annex 15-A.

In order to comply with its obligations under Chapter Fifteen, the United States must waive the application of certain federal laws, regulations, procedures and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. By virtue of taking on the procurement-related obligations in Chapter Fifteen, Australia is eligible to be designated under section 301(b) of the Trade Agreements Act and will be so designated.

The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act for goods and services of countries and instrumentalities that are parties to the WTO Agreement on Government Procurement and countries that are parties to NAFTA. Section 401 of the bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for a party to a free trade agreement that entered into force for the United States after December 31, 2003 and prior to January 2, 2005, an "eligible product" means "a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States." This amended definition coupled with the President's exercise of his authority under section 301(a) of the Trade Agreement Act will allow procurement of products and services of Australia and other Parties to FTAs that entered into force during the specified time period.

2. Administrative Action

As noted above, Annex 15-A of the Agreement provides that U.S. government entities subject to Chapter 15 must apply the Chapter's rules to goods and services from Australia when a procurement is valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulation ("FAR") Council of the thresholds that pertain to Australia under the Agreement. The FAR Council will then incorporate those thresholds into the FAR.

Chapter Sixteen (Electronic Commerce)

No statutory or administrative changes will be required to implement Chapter Sixteen.

Chapter Seventeen (Intellectual Property Rights)

No statutory or administrative changes will be required to implement Chapter Seventeen.

Chapter Eighteen (Labor)

1. Implementing Bill

No statutory changes will be required to implement Chapter Eighteen.

2. Administrative Action

Article 18.4.2 of the Agreement calls for each government to designate an office to serve as the contact point for implementing the Agreement's labor provisions. The Department of Labor's Bureau of International Affairs will serve as the U.S. contact point for this purpose.

Chapter Nineteen (Environment)

1. Implementing Bill

No statutory or administrative changes will be required to implement Chapter Nineteen.

2. Administrative Action

Article 19.7.1 of the Agreement provides that either Party may request consultations with the other concerning any matter arising under the Chapter and contemplates that each Party shall designate a contact point to receive such requests. USTR's Office of Environment and Natural Resources will serve as the U.S. contact point for this purpose.