

108TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

Mr. \_\_\_\_\_ (for himself and \_\_\_\_\_) (by request) introduced  
the following bill; which was read twice and referred to the Committee  
on \_\_\_\_\_

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**A BILL**

To implement the United States-Australia Free Trade  
Agreement.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “United States-Australia Free Trade Agreement Imple-  
6 mentation Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

## 2

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

- Sec. 101. Approval and entry into force of the Agreement.
- Sec. 102. Relationship of the Agreement to United States and State law.
- Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.
- Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.
- Sec. 105. Administration of dispute settlement proceedings.
- Sec. 106. Effective dates; effect of termination.

## TITLE II—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.
- Sec. 202. Additional duties on certain agricultural goods.
- Sec. 203. Rules of origin.
- Sec. 204. Customs user fees.
- Sec. 205. Disclosure of incorrect information.
- Sec. 206. Enforcement relating to trade in textile and apparel goods.
- Sec. 207. Regulations.

## TITLE III—RELIEF FROM IMPORTS

- Sec. 301. Definitions.

## Subtitle A—Relief From Imports Benefiting From the Agreement

- Sec. 311. Commencing of action for relief.
- Sec. 312. Commission action on petition.
- Sec. 313. Provision of relief.
- Sec. 314. Termination of relief authority.
- Sec. 315. Compensation authority.
- Sec. 316. Confidential business information.

## Subtitle B—Textile and Apparel Safeguard Measures

- Sec. 321. Commencement of action for relief.
- Sec. 322. Determination and provision of relief.
- Sec. 323. Period of relief.
- Sec. 324. Articles exempt from relief.
- Sec. 325. Rate after termination of import relief.
- Sec. 326. Termination of relief authority.
- Sec. 327. Compensation authority.
- Sec. 328. Business confidential information.

## Subtitle C—Cases Under Title II of the Trade Act of 1974

- Sec. 331. Findings and action on goods from Australia.

## TITLE IV—PROCUREMENT

- Sec. 401. Eligible products.

**1 SEC. 2. PURPOSES.**

**2** The purposes of this Act are—

1 (1) to approve and implement the Free Trade  
2 Agreement between the United States and Australia,  
3 entered into under the authority of section 2103(b)  
4 of the Bipartisan Trade Promotion Authority Act of  
5 2002 (19 U.S.C. 3803(b));

6 (2) to strengthen and develop economic rela-  
7 tions between the United States and Australia for  
8 their mutual benefit;

9 (3) to establish free trade between the 2 nations  
10 through the reduction and elimination of barriers to  
11 trade in goods and services and to investment; and

12 (4) to lay the foundation for further coopera-  
13 tion to expand and enhance the benefits of such  
14 Agreement.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) AGREEMENT.—The term “Agreement”  
18 means the United States-Australia Free Trade  
19 Agreement approved by Congress under section  
20 101(a)(1).

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

23 (3) TEXTILE OR APPAREL GOOD.—The term  
24 “textile or apparel good” means a good listed in the  
25 Annex to the Agreement on Textiles and Clothing

1 referred to in section 101(d)(4) of the Uruguay  
2 Round Agreements Act (19 U.S.C. 3511(d)(4)).

3 **TITLE I—APPROVAL OF, AND**  
4 **GENERAL PROVISIONS RE-**  
5 **LATING TO, THE AGREEMENT**

6 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**  
7 **AGREEMENT.**

8 (a) APPROVAL OF AGREEMENT AND STATEMENT OF  
9 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of  
10 the Bipartisan Trade Promotion Authority Act of 2002  
11 (19 U.S.C. 3805) and section 151 of the Trade Act of  
12 1974 (19 U.S.C. 2191), Congress approves—

13 (1) the United States-Australia Free Trade  
14 Agreement entered into on May 18, 2004, with the  
15 Government of Australia and submitted to Congress  
16 on [\_\_\_\_\_, 2004]; and

17 (2) the statement of administrative action pro-  
18 posed to implement the Agreement that was sub-  
19 mitted to Congress on [\_\_\_\_\_, 2004].

20 (b) CONDITIONS FOR ENTRY INTO FORCE OF THE  
21 AGREEMENT.—At such time as the President determines  
22 that Australia has taken measures necessary to bring it  
23 into compliance with those provisions of the Agreement  
24 that are to take effect on the date on which the Agreement  
25 enters into force, the President is authorized to exchange

1 notes with the Government of Australia providing for the  
2 entry into force, on or after January 1, 2005, of the  
3 Agreement with respect to the United States.

4 **SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED**  
5 **STATES AND STATE LAW.**

6 (a) RELATIONSHIP OF AGREEMENT TO UNITED  
7 STATES LAW.—

8 (1) UNITED STATES LAW TO PREVAIL IN CON-  
9 FFLICT.—No provision of the Agreement, nor the ap-  
10 plication of any such provision to any person or cir-  
11 cumstance, which is inconsistent with any law of the  
12 United States shall have effect.

13 (2) CONSTRUCTION.—Nothing in this Act shall  
14 be construed—

15 (A) to amend or modify any law of the  
16 United States, or

17 (B) to limit any authority conferred under  
18 any law of the United States,

19 unless specifically provided for in this Act.

20 (b) RELATIONSHIP OF AGREEMENT TO STATE  
21 LAW.—

22 (1) LEGAL CHALLENGE.—No State law, or the  
23 application thereof, may be declared invalid as to  
24 any person or circumstance on the ground that the  
25 provision or application is inconsistent with the

1 Agreement, except in an action brought by the  
2 United States for the purpose of declaring such law  
3 or application invalid.

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

6 (A) any law of a political subdivision of a  
7 State; and

8 (B) any State law regulating or taxing the  
9 business of insurance.

10 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-  
11 VATE REMEDIES.—No person other than the United  
12 States—

13 (1) shall have any cause of action or defense  
14 under the Agreement or by virtue of congressional  
15 approval thereof; or

16 (2) may challenge, in any action brought under  
17 any provision of law, any action or inaction by any  
18 department, agency, or other instrumentality of the  
19 United States, any State, or any political subdivision  
20 of a State, on the ground that such action or inac-  
21 tion is inconsistent with the Agreement.

22 **SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF**  
23 **ENTRY INTO FORCE AND INITIAL REGULA-**  
24 **TIONS.**

25 (a) IMPLEMENTING ACTIONS.—

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

3           (A) the President may proclaim such ac-  
4 tions, and

5           (B) other appropriate officers of the  
6 United States Government may issue such reg-  
7 ulations,

8 as may be necessary to ensure that any provision of  
9 this Act, or amendment made by this Act, that takes  
10 effect on the date the Agreement enters into force  
11 is appropriately implemented on such date, but no  
12 such proclamation or regulation may have an effec-  
13 tive date earlier than the date on which the Agree-  
14 ment enters into force.

15           (2) EFFECTIVE DATE OF CERTAIN PROCLAIMED  
16 ACTIONS.—Any action proclaimed by the President  
17 under the authority of this Act that is not subject  
18 to the consultation and layover provisions under sec-  
19 tion 104, may not take effect before the 15th day  
20 after the date on which the text of the proclamation  
21 is published in the Federal Register.

22           (3) WAIVER OF 15-DAY RESTRICTION.—The 15-  
23 day restriction in paragraph (2) on the taking effect  
24 of proclaimed actions is waived to the extent that  
25 the application of such restriction would prevent the

1 taking effect on the date the Agreement enters into  
2 force of any action proclaimed under this section.

3 (b) INITIAL REGULATIONS.—Initial regulations nec-  
4 essary or appropriate to carry out the actions required by  
5 or authorized under this Act or proposed in the statement  
6 of administrative action submitted under section  
7 101(a)(2) to implement the Agreement shall, to the max-  
8 imum extent feasible, be issued within 1 year after the  
9 date on which the Agreement enters into force. In the case  
10 of any implementing action that takes effect on a date  
11 after the date on which the Agreement enters into force,  
12 initial regulations to carry out that action shall, to the  
13 maximum extent feasible, be issued within 1 year after  
14 such effective date.

15 **SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR,**  
16 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**  
17 **TIONS.**

18 If a provision of this Act provides that the implemen-  
19 tation of an action by the President by proclamation is  
20 subject to the consultation and layover requirements of  
21 this section, such action may be proclaimed only if—

22 (1) the President has obtained advice regarding  
23 the proposed action from—

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

4 (B) the United States International Trade  
5 Commission;

6 (2) the President has submitted a report to the  
7 Committee on Finance of the Senate and the Com-  
8 mittee on Ways and Means of the House of Rep-  
9 resentatives that sets forth—

10 (A) the action proposed to be proclaimed  
11 and the reasons therefor; and

12 (B) the advice obtained under paragraph  
13 (1);

14 (3) a period of 60 calendar days, beginning on  
15 the first day on which the requirements set forth in  
16 paragraphs (1) and (2) have been met has expired;  
17 and

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

21 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**  
22 **CEEDINGS.**

23 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—  
24 The President is authorized to establish or designate with-  
25 in the Department of Commerce an office that shall be

1 responsible for providing administrative assistance to pan-  
2 els established under chapter 21 of the Agreement. The  
3 office may not be considered to be an agency for purposes  
4 of section 552 of title 5, United States Code.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
6 are authorized to be appropriated for each fiscal year after  
7 fiscal year 2004 to the Department of Commerce such  
8 sums as may be necessary for the establishment and oper-  
9 ations of the office under subsection (a) and for the pay-  
10 ment of the United States share of the expenses of panels  
11 established under chapter 21 of the Agreement.

12 **SEC. 106. EFFECTIVE DATES; EFFECT OF TERMINATION.**

13 (a) EFFECTIVE DATES.—Except as provided in sub-  
14 section (b), the provisions of this Act and the amendments  
15 made by this Act take effect on the date on which the  
16 Agreement enters into force.

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

19 (c) TERMINATION OF THE AGREEMENT.—On the  
20 date on which the Agreement terminates, the provisions  
21 of this Act (other than this subsection) and the amend-  
22 ments made by this Act shall cease to be effective.

1 **TITLE II—CUSTOMS PROVISIONS**

2 **SEC. 201. TARIFF MODIFICATIONS.**

3 (a) TARIFF MODIFICATIONS PROVIDED FOR IN THE  
4 AGREEMENT.—The President may proclaim—

5 (1) such modifications or continuation of any  
6 duty,

7 (2) such continuation of duty-free or excise  
8 treatment, or

9 (3) such additional duties,

10 as the President determines to be necessary or appropriate  
11 to carry out or apply articles 2.3, 2.5, and 2.6, and Annex  
12 2–B of the Agreement.

13 (b) OTHER TARIFF MODIFICATIONS.—Subject to the  
14 consultation and layover provisions of section 104, the  
15 President may proclaim—

16 (1) such modifications or continuation of any  
17 duty,

18 (2) such modifications as the United States  
19 may agree to with Australia regarding the staging of  
20 any duty treatment set forth in Annex 2–B of the  
21 Agreement,

22 (3) such continuation of duty-free or excise  
23 treatment, or

24 (4) such additional duties,

1 as the President determines to be necessary or appropriate  
2 to maintain the general level of reciprocal and mutually  
3 advantageous concessions with respect to Australia pro-  
4 vided for by the Agreement.

5 (c) CONVERSION TO AD VALOREM RATES.—For pur-  
6 poses of subsections (a) and (b), with respect to any good  
7 for which the base rate in the Schedule of the United  
8 States to Annex 2–B of the Agreement is a specific or  
9 compound rate of duty, the President may substitute for  
10 the base rate an ad valorem rate that the President deter-  
11 mines to be equivalent to the base rate.

12 **SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICUL-**  
13 **TURAL GOODS.**

14 (a) GENERAL PROVISIONS.—

15 (1) APPLICABILITY OF SUBSECTION.—This sub-  
16 section applies to additional duties assessed under  
17 subsections (b), (c), and (d).

18 (2) APPLICABLE NTR (MFN) RATE OF  
19 DUTY.—For purposes of subsections (b), (c), and  
20 (d), the term “applicable NTR (MFN) rate of duty”  
21 means, with respect to a safeguard good, a rate of  
22 duty that is the lesser of—

23 (A) the column 1 general rate of duty that  
24 would have been imposed under the HTS on the  
25 same safeguard good entered, without a claim

1 for preferential treatment, at the time the addi-  
2 tional duty is imposed under subsection (b), (c),  
3 or (d), as the case may be; or

4 (B) the column 1 general rate of duty that  
5 would have been imposed under the HTS on the  
6 same safeguard good entered, without a claim  
7 for preferential treatment, on December 31,  
8 2004.

9 (3) SCHEDULE RATE OF DUTY.—For purposes  
10 of subsections (b) and (c), the term “schedule rate  
11 of duty” means, with respect to a safeguard good,  
12 the rate of duty for that good set out in the Sched-  
13 ule of the United States to Annex 2–B of the Agree-  
14 ment.

15 (4) SAFEGUARD GOOD.—In this subsection, the  
16 term “safeguard good” means—

17 (A) a horticulture safeguard good de-  
18 scribed subsection (b)(1)(B); or

19 (B) a beef safeguard good described in  
20 subsection (c)(1) or subsection (d)(1)(A).

21 (5) EXCEPTIONS.—No additional duty shall be  
22 assessed on a good under subsection (b), (c), or (d)  
23 if, at the time of entry, the good is subject to import  
24 relief under—

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

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

3 (6) TERMINATION.—The assessment of an ad-  
4 ditional duty on a good under subsection (b) or (c),  
5 whichever is applicable, shall cease to apply to that  
6 good on the date on which duty-free treatment must  
7 be provided to that good under the Schedule of the  
8 United States to Annex 2–B of the Agreement.

9 (7) NOTICE.—Not later than 60 days after the  
10 date on which the Secretary of the Treasury assesses  
11 an additional duty on a good under subsection (b),  
12 (c), or (d), the Secretary shall notify the Govern-  
13 ment of Australia in writing of such action and shall  
14 provide to that Government data supporting the as-  
15 sessment of the additional duty.

16 (b) ADDITIONAL DUTIES ON HORTICULTURE SAFE-  
17 GUARD GOODS.—

18 (1) DEFINITIONS.—In this subsection:

19 (A) F.O.B.—The term “F.O.B.” means  
20 free on board, regardless of the mode of trans-  
21 portation, at the point of direct shipment by the  
22 seller to the buyer.

23 (B) HORTICULTURE SAFEGUARD GOOD.—  
24 The term “horticulture safeguard good” means  
25 a good—

1 (i) that qualifies as an originating  
2 good under section 203;

3 (ii) that is included in the United  
4 States Horticulture Safeguard List set  
5 forth in Annex 3–A of the Agreement; and

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

9 (C) UNIT IMPORT PRICE.—The “unit im-  
10 port price” of a good means the price of the  
11 good determined on the basis of the F.O.B. im-  
12 port price of the good, expressed in either dol-  
13 lars per kilogram or dollars per liter, whichever  
14 unit of measure is indicated for the good in the  
15 United States Horticulture Safeguard List set  
16 forth in Annex 3–A of the Agreement.

17 (D) TRIGGER PRICE.—The “trigger price”  
18 for a good is the trigger price indicated for that  
19 good in the United States Horticulture Safe-  
20 guard List set forth in Annex 3–A of the  
21 Agreement or any amendment thereto.

22 (2) ADDITIONAL DUTIES.—In addition to any  
23 duty proclaimed under subsection (a) or (b) of sec-  
24 tion 201, and subject to subsection (a) of this sec-  
25 tion, the Secretary of the Treasury shall assess a

1 duty on a horticulture safeguard good, in the  
 2 amount determined under paragraph (3), if the Sec-  
 3 retary determines that the unit import price of the  
 4 good when it enters the United States is less than  
 5 the trigger price for that good.

6 (3) CALCULATION OF ADDITIONAL DUTY.—The  
 7 additional duty assessed under this subsection on a  
 8 horticulture safeguard good shall be an amount de-  
 9 termined in accordance with the following table:

<b>If the excess of the trigger price over the unit import price is:</b>	<b>The additional duty is an amount equal to:</b>
Not more than 10 percent of the trigger price	0.
More than 10 percent but not more than 40 percent of the trigger price .....	30 percent of the excess of the appli- cable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price .....	50 percent of such excess.
More than 60 percent but not more than 75 percent of the trigger price .....	70 percent of such excess.
More than 75 percent of the trigger price .....	100 percent of such excess.

10 (c) ADDITIONAL DUTIES ON BEEF SAFEGUARD  
 11 GOODS BASED ON QUANTITY OF IMPORTS.—

12 (1) DEFINITION.—In this subsection, the term  
 13 “beef safeguard good” means a good—

14 (A) that qualifies as an originating good  
 15 under section 203;

16 (B) that is listed in paragraph 3 of Annex  
 17 I of the General Notes to the Schedule of the  
 18 United States to Annex 2–B of the Agreement;  
 19 and

1 (C) for which a claim for preferential  
2 treatment under the Agreement has been made.

3 (2) ADDITIONAL DUTIES.—In addition to any  
4 duty proclaimed under subsection (a) or (b) of sec-  
5 tion 201, and subject to subsection (a) of this sec-  
6 tion and paragraphs (4) and (5) of this subsection,  
7 the Secretary of the Treasury shall assess a duty, in  
8 the amount determined under paragraph (3), on a  
9 beef safeguard good imported into the United States  
10 in a calendar year if the Secretary determines that,  
11 prior to such importation, the total volume of beef  
12 safeguard goods imported into the United States in  
13 that calendar year is equal to or greater than 110  
14 percent of the volume set out for beef safeguard  
15 goods in the corresponding year in the table con-  
16 tained in paragraph 3(a) of Annex I of the General  
17 Notes to the Schedule of the United States to Annex  
18 2–B of the Agreement. For purposes of this sub-  
19 section, the years 1 through 19 set out in the table  
20 contained in paragraph 3(a) of such Annex I cor-  
21 respond to the calendar years 2005 through 2023.

22 (3) CALCULATION OF ADDITIONAL DUTY.—The  
23 additional duty on a beef safeguard good under this  
24 subsection shall be an amount equal to 75 percent

1 of the excess of the applicable NTR (MFN) rate of  
2 duty over the schedule rate of duty.

3 (4) WAIVER.—

4 (A) IN GENERAL.—The United States  
5 Trade Representative is authorized to waive the  
6 application of this subsection, if the Trade Rep-  
7 resentative determines that extraordinary mar-  
8 ket conditions demonstrate that the waiver  
9 would be in the national interest of the United  
10 States, after the requirements of subparagraph  
11 (B) are met.

12 (B) NOTICE AND CONSULTATIONS.—  
13 Promptly after receiving a request for a waiver  
14 of this subsection, the Trade Representative  
15 shall notify the Committee on Ways and Means  
16 of the House of Representatives and the Com-  
17 mittee on Finance of the Senate, and may make  
18 the determination provided for in subparagraph  
19 (A) only after consulting with—

20 (i) appropriate private sector advisory  
21 committees established under section 135  
22 of the Trade Act of 1974 (19 U.S.C.  
23 2155); and

24 (ii) the Committee on Ways and  
25 Means of the House of Representatives

1 and the Committee on Finance of the Sen-  
2 ate regarding—

3 (I) the reasons supporting the  
4 determination to grant the waiver;  
5 and

6 (II) the proposed scope and dura-  
7 tion of the waiver.

8 (C) NOTIFICATION OF THE SEC-  
9 RETARY OF THE TREASURY AND PUBLICA-  
10 TION.—Upon granting a waiver under this  
11 paragraph, the Trade Representative shall  
12 promptly notify the Secretary of the Treas-  
13 ury of the period in which the waiver will  
14 be in effect, and shall publish notice of the  
15 waiver in the Federal Register.

16 (5) EFFECTIVE DATES.—This subsection takes  
17 effect on January 1, 2013, and shall not be effective  
18 after December 31, 2022.

19 (d) ADDITIONAL DUTIES ON BEEF SAFEGUARD  
20 GOODS BASED ON PRICE.—

21 (1) DEFINITIONS.—In this subsection:

22 (A) BEEF SAFEGUARD GOOD.—The term  
23 “beef safeguard good” means a good—

24 (i) that qualifies as an originating  
25 good under section 203;

1 (ii) that is classified under subheading  
2 0201.10.50, 0201.20.80, 0201.30.80,  
3 0202.10.50, 0202.20.80, or 0202.30.80 of  
4 the HTS; and

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

8 (B) CALENDAR QUARTER.—

9 (i) IN GENERAL.—The term “calendar  
10 quarter” means any 3-month period begin-  
11 ning on January 1, April 1, July 1, or Oc-  
12 tober 1 of a calendar year.

13 (ii) FIRST CALENDAR QUARTER.—The  
14 term “first calendar quarter” means the  
15 calendar quarter beginning on January 1.

16 (iii) SECOND CALENDAR QUARTER.—  
17 The term “second calendar quarter”  
18 means the calendar quarter beginning on  
19 April 1.

20 (iv) THIRD CALENDAR QUARTER.—  
21 The term “third calendar quarter” means  
22 the calendar quarter beginning on July 1.

23 (v) FOURTH CALENDAR QUARTER.—  
24 The term “fourth calendar quarter” means

1           the calendar quarter beginning on October  
2           1.

3           (C) MONTHLY AVERAGE INDEX PRICE.—

4           The term “monthly average index price” means  
5           the simple average, as determined by the Sec-  
6           retary of Agriculture, for a calendar month of  
7           the daily average index prices for Wholesale  
8           Boxed Beef Cut-Out Value Select 1–3 Central  
9           U.S. 600–750 lbs., or its equivalent, as such  
10          simple average is reported by the Agricultural  
11          Marketing Service of the Department of Agri-  
12          culture in Report LM—XB459 or any equiva-  
13          lent report.

14          (D) 24-MONTH TRIGGER PRICE.—The term  
15          “24-month trigger price” means, with respect  
16          to any calendar month, the average of the  
17          monthly average index prices for the 24 pre-  
18          ceding calendar months, multiplied by 0.935.

19          (2) ADDITIONAL DUTIES.—In addition to any  
20          duty proclaimed under subsection (a) or (b) of sec-  
21          tion 201, and subject to subsection (a) of this sec-  
22          tion and paragraphs (4) through (6) of this sub-  
23          section, the Secretary of the Treasury shall assess a  
24          duty, in the amount determined under paragraph

1 (3), on a beef safeguard good imported into the  
2 United States if—

3 (A)(i) the good is imported in the first cal-  
4 endar quarter, second calendar quarter, or third  
5 calendar quarter of a calendar year; and

6 (ii) the monthly average index price, in any  
7 2 calendar months of the preceding calendar  
8 quarter, is less than the 24-month trigger price;  
9 or

10 (B)(i) the good is imported in the fourth  
11 calendar quarter of a calendar year; and

12 (ii)(I) the monthly average index price, in  
13 any 2 calendar months of the preceding cal-  
14 endar quarter, is less than the 24-month trigger  
15 price; or

16 (II) the monthly average index price, in  
17 any of the 4 calendar months preceding Janu-  
18 ary 1 of the succeeding calendar year, is less  
19 than the 24-month trigger price.

20 (3) CALCULATION OF ADDITIONAL DUTY.—The  
21 additional duty on a beef safeguard good under this  
22 subsection shall be an amount equal to 65 percent  
23 of the applicable NTR (MFN) rate of duty for that  
24 good.

1           (4) LIMITATION.—An additional duty shall be  
2           assessed under this subsection on a beef safeguard  
3           good imported into the United States in a calendar  
4           year only if, prior to the importation of that good,  
5           the total quantity of beef safeguard goods imported  
6           into the United States in that calendar year is equal  
7           to or greater than the sum of—

8                   (A) the quantity of goods of Australia eli-  
9                   gible to enter the United States in that year  
10                  specified in Additional United States Note 3 to  
11                  Chapter 2 of the HTS; and

12                   (B)(i) in 2023, 70,420 metric tons; or

13                   (ii) in 2024, and in each year thereafter,  
14                  a quantity that is 0.6 percent greater than the  
15                  quantity provided for in the preceding year  
16                  under this subparagraph.

17           (5) WAIVER.—

18                   (A) IN GENERAL.—The United States  
19                  Trade Representative is authorized to waive the  
20                  application of this subsection, if the Trade Rep-  
21                  resentative determines that extraordinary mar-  
22                  ket conditions demonstrate that the waiver  
23                  would be in the national interest of the United  
24                  States, after the requirements of subparagraph  
25                  (B) are met.

1 (B) NOTICE AND CONSULTATIONS.—  
2 Promptly after receiving a request for a waiver  
3 of this subsection, the Trade Representative  
4 shall notify the Committee on Ways and Means  
5 of the House of Representatives and the Com-  
6 mittee on Finance of the Senate, and may make  
7 the determination provided for in subparagraph  
8 (A) only after consulting with—

9 (i) appropriate private sector advisory  
10 committees established under section 135  
11 of the Trade Act of 1974 (19 U.S.C.  
12 2155); and

13 (ii) the Committee on Ways and  
14 Means of the House of Representatives  
15 and the Committee on Finance of the Sen-  
16 ate regarding—

17 (I) the reasons supporting the  
18 determination to grant the waiver;  
19 and

20 (II) the proposed scope and dura-  
21 tion of the waiver.

22 (C) NOTIFICATION OF THE SEC-  
23 RETARY OF THE TREASURY AND PUBLICA-  
24 TION.—Upon granting a waiver under this  
25 paragraph, the Trade Representative shall

1                    promptly notify the Secretary of the Treas-  
2                    ury of the period in which the waiver will  
3                    be in effect, and shall publish notice of the  
4                    waiver in the Federal Register.

5                    (6) EFFECTIVE DATE.—This subsection takes  
6                    effect on January 1, 2023.

7    **SEC. 203. RULES OF ORIGIN.**

8                    (a) APPLICATION AND INTERPRETATION.—In this  
9                    section:

10                    (1) TARIFF CLASSIFICATION.—The basis for  
11                    any tariff classification is the HTS.

12                    (2) REFERENCE TO HTS.—Whenever in this  
13                    section there is a reference to a heading or sub-  
14                    heading, such reference shall be a reference to a  
15                    heading or subheading of the HTS.

16                    (3) COST OR VALUE.—Any cost or value re-  
17                    ferred to in this section shall be recorded and main-  
18                    tained in accordance with the generally accepted ac-  
19                    counting principles applicable in the territory of the  
20                    country in which the good is produced (whether Aus-  
21                    tralia or the United States).

22                    (b) ORIGINATING GOODS.—For purposes of this Act  
23                    and for purposes of implementing the preferential treat-  
24                    ment provided for under the Agreement, a good is an orig-  
25                    inating good if—

1           (1) the good is a good wholly obtained or pro-  
2           duced entirely in the territory of Australia, the  
3           United States, or both;

4           (2) the good—

5                 (A) is produced entirely in the territory of  
6                 Australia, the United States, or both, and—

7                         (i) each of the nonoriginating mate-  
8                         rials used in the production of the good  
9                         undergoes an applicable change in tariff  
10                        classification specified in Annex 4–A or  
11                        Annex 5–A of the Agreement;

12                       (ii) the good otherwise satisfies any  
13                        applicable regional value-content require-  
14                        ment referred to in Annex 5–A of the  
15                        Agreement; or

16                       (iii) the good meets any other require-  
17                        ments specified in Annex 4–A or Annex 5–  
18                        A of the Agreement; and

19                 (B) the good satisfies all other applicable  
20                 requirements of this section;

21           (3) the good is produced entirely in the terri-  
22           tory of Australia, the United States, or both, exclu-  
23           sively from materials described in paragraph (1) or  
24           (2); or

1           (4) the good otherwise qualifies as an origi-  
2           nating good under this section.

3           (c) DE MINIMIS AMOUNTS OF NONORIGINATING MA-  
4           TERIALS.—

5           (1) IN GENERAL.—Except as provided in para-  
6           graphs (2) and (3), a good that does not undergo a  
7           change in tariff classification pursuant to Annex 5-  
8           A of the Agreement is an originating good if—

9                   (A) the value of all nonoriginating mate-  
10                  rials that—

11                           (i) are used in the production of the  
12                           good, and

13                           (ii) do not undergo the required  
14                           change in tariff classification,

15                           does not exceed 10 percent of the adjusted  
16                           value of the good;

17                           (B) the good meets all other applicable re-  
18                           quirements of this section; and

19                           (C) the value of such nonoriginating mate-  
20                           rials is included in the value of nonoriginating  
21                           materials for any applicable regional value-con-  
22                           tent requirement for the good.

23           (2) EXCEPTIONS.—Paragraph (1) does not  
24           apply to the following:

1 (A) A nonoriginating material provided for  
2 in chapter 4 of the HTS or in subheading  
3 1901.90 that is used in the production of a  
4 good provided for in chapter 4 of the HTS.

5 (B) A nonoriginating material provided for  
6 in chapter 4 of the HTS or in subheading  
7 1901.90 that is used in the production of a  
8 good provided for in subheading 1901.10,  
9 1901.20, or 1901.90, heading 2105, or sub-  
10 heading 2106.90, 2202.90, or 2309.90.

11 (C) A nonoriginating material provided for  
12 in heading 0805 or any of subheadings 2009.11  
13 through 2009.39 that is used in the production  
14 of a good provided for in any of subheadings  
15 2009.11 through 2009.39, or in subheading  
16 2106.90 or 2202.90.

17 (D) A nonoriginating material provided for  
18 in chapter 15 of the HTS that is used in the  
19 production of a good provided for in any of  
20 headings 1501.00.00 through 1508, or in head-  
21 ing 1512, 1514, or 1515.

22 (E) A nonoriginating material provided for  
23 in heading 1701 that is used in the production  
24 of a good provided for in any of headings 1701  
25 through 1703.

1 (F) A nonoriginating material provided for  
2 in chapter 17 of the HTS or heading  
3 1805.00.00 that is used in the production of a  
4 good provided for in subheading 1806.10.

5 (G) A nonoriginating material provided for  
6 in any of headings 2203 through 2208 that is  
7 used in the production of a good provided for  
8 in heading 2207 or 2208.

9 (H) A nonoriginating material used in the  
10 production of a good provided for in any of  
11 chapters 1 through 21 of the HTS unless the  
12 nonoriginating material is provided for in a dif-  
13 ferent subheading than the good for which ori-  
14 gin is being determined under this section.

15 (3) TEXTILE AND APPAREL GOODS.—

16 (A) IN GENERAL.—Except as provided in  
17 subparagraph (B), a textile or apparel good  
18 that is not an originating good because certain  
19 fibers or yarns used in the production of the  
20 component of the good that determines the tar-  
21 iff classification of the good do not undergo an  
22 applicable change in tariff classification set out  
23 in Annex 4–A of the Agreement shall be consid-  
24 ered to be an originating good if the total  
25 weight of all such fibers or yarns in that com-

1           ponent is not more than 7 percent of the total  
2           weight of that component.

3           (B) CERTAIN TEXTILE OR APPAREL  
4           GOODS.—A textile or apparel good containing  
5           elastomeric yarns in the component of the good  
6           that determines the tariff classification of the  
7           good shall be considered to be an originating  
8           good only if such yarns are wholly formed in  
9           the territory of Australia or the United States.

10          (C) YARN, FABRIC, OR FIBER.—For pur-  
11          poses of this paragraph, in the case of a textile  
12          or apparel good that is a yarn, fabric, or group  
13          of fibers, the term “component of the good that  
14          determines the tariff classification of the good”  
15          means all of the fibers in the yarn, fabric, or  
16          group of fibers.

17          (d) ACCUMULATION.—

18          (1) ORIGINATING MATERIALS USED IN PRODUC-  
19          TION OF GOODS OF OTHER COUNTRY.—Originating  
20          materials from the territory of Australia or the  
21          United States that are used in the production of a  
22          good in the territory of the other country shall be  
23          considered to originate in the territory of the other  
24          country.

1           (2) MULTIPLE PROCEDURES.—A good that is  
2           produced in the territory of Australia, the United  
3           States, or both, by 1 or more producers, is an origi-  
4           nating good if the good satisfies the requirements of  
5           subsection (b) and all other applicable requirements  
6           of this section.

7           (e) REGIONAL VALUE-CONTENT.—

8           (1) IN GENERAL.—For purposes of subsection  
9           (b)(2), the regional value-content of a good referred  
10          to in Annex 5–A of the Agreement, except for goods  
11          to which paragraph (4) applies, shall be calculated  
12          by the importer, exporter, or producer of the good,  
13          on the basis of the build-down method described in  
14          paragraph (2) or the build-up method described in  
15          paragraph (3).

16          (2) BUILD-DOWN METHOD.—

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

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

20                (B) DEFINITIONS.—In subparagraph (A):

21                    (i) RVC.—The term “RVC” means  
22                    the regional value-content of the good, ex-  
23                    pressed as a percentage.

1 (ii) AV.—The term “AV” means the  
2 adjusted value of the good.

3 (iii) VNM.—The term “VNM” means  
4 the value of nonoriginating materials that  
5 are acquired and used by the producer in  
6 the production of the good, but does not  
7 include the value of a material that is self-  
8 produced.

9 (3) BUILD-UP METHOD.—

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

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

13 (B) DEFINITIONS.—In subparagraph (A):

14 (i) RVC.—The term “RVC” means  
15 the regional value-content of the good, ex-  
16 pressed as a percentage.

17 (ii) AV.—The term “AV” means the  
18 adjusted value of the good.

19 (iii) VOM.—The term “VOM” means  
20 the value of originating materials that are  
21 acquired or self-produced, and used by the  
22 producer in the production of the good.

23 (4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE  
24 GOODS.—

1 (A) IN GENERAL.—For purposes of sub-  
2 section (b)(2), the regional value-content of an  
3 automotive good referred to in Annex 5–A of  
4 the Agreement shall be calculated by the im-  
5 porter, exporter, or producer of the good, on the  
6 basis of the following net cost method:

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

7 (B) DEFINITIONS.—In subparagraph (A):

8 (i) AUTOMOTIVE GOOD.—The term  
9 “automotive good” means a good provided  
10 for in any of subheadings 8407.31 through  
11 8407.34, subheading 8407.20, heading  
12 8409, or in any of headings 8701 through  
13 8708.

14 (ii) RVC.—The term “RVC” means  
15 the regional value-content of the auto-  
16 motive good, expressed as a percentage.

17 (iii) NC.—The term “NC” means the  
18 net cost of the automotive good.

19 (iv) VNM.—The term “VNM” means  
20 the value of nonoriginating materials that  
21 are acquired and used by the producer in  
22 the production of the automotive good, but  
23 does not include the value of a material  
24 that is self-produced.

1 (C) MOTOR VEHICLES.—

2 (i) BASIS OF CALCULATION.—For  
3 purposes of determining the regional value-  
4 content under subparagraph (A) for an  
5 automotive good that is a motor vehicle  
6 provided for in any of headings 8701  
7 through 8705, an importer, exporter, or  
8 producer may average the amounts cal-  
9 culated under the formula contained in  
10 subparagraph (A), over the producer's fis-  
11 cal year—

12 (I) with respect to all motor vehi-  
13 cles in any one of the categories de-  
14 scribed in clause (ii); or

15 (II) with respect to all motor ve-  
16 hicles in any such category that are  
17 exported to the territory of the United  
18 States or Australia.

19 (ii) CATEGORIES.—A category is de-  
20 scribed in this clause if it—

21 (I) is the same model line of  
22 motor vehicles, is in the same class of  
23 vehicles, and is produced in the same  
24 plant in the territory of Australia or  
25 the United States, as the good de-

1 scribed in clause (i) for which regional  
2 value-content is being calculated;

3 (II) is the same class of motor  
4 vehicles, and is produced in the same  
5 plant in the territory of Australia or  
6 the United States, as the good de-  
7 scribed in clause (i) for which regional  
8 value-content is being calculated; or

9 (III) is the same model line of  
10 motor vehicles produced in either the  
11 territory of Australia or the United  
12 States, as the good described in clause  
13 (i) for which regional value-content is  
14 being calculated.

15 (D) OTHER AUTOMOTIVE GOODS.—For  
16 purposes of determining the regional value-con-  
17 tent under subparagraph (A) for automotive  
18 goods provided for in any of subheadings  
19 8407.31 through 8407.34, in subheading  
20 8407.20, or in heading 8409, 8706, 8707, or  
21 8708, that are produced in the same plant, an  
22 importer, exporter, or producer may—

23 (i) average the amounts calculated  
24 under the formula contained in subpara-  
25 graph (A) over—

1 (I) the fiscal year of the motor  
2 vehicle producer to whom the auto-  
3 motive goods are sold,

4 (II) any quarter or month, or

5 (III) its own fiscal year,

6 if the goods were produced during the fis-  
7 cal year, quarter, or month that is the  
8 basis for the calculation;

9 (ii) determine the average referred to  
10 in clause (i) separately for such goods sold  
11 to one or more motor vehicle producers; or

12 (iii) make a separate determination  
13 under clause (i) or (ii) for automotive  
14 goods that are exported to the territory of  
15 the United States or Australia.

16 (E) CALCULATING NET COST.—Consistent  
17 with the provisions regarding allocation of costs  
18 set out in generally accepted accounting prin-  
19 ciples, the net cost of the automotive good  
20 under subparagraph (B) shall be calculated  
21 by—

22 (i) calculating the total cost incurred  
23 with respect to all goods produced by the  
24 producer of the automotive good, sub-  
25 tracting any sales promotion, marketing

1 and after-sales service costs, royalties,  
2 shipping and packing costs, and nonallow-  
3 able interest costs that are included in the  
4 total cost of all such goods, and then rea-  
5 sonably allocating the resulting net cost of  
6 those goods to the automotive good;

7 (ii) calculating the total cost incurred  
8 with respect to all goods produced by that  
9 producer, reasonably allocating the total  
10 cost to the automotive good, and then sub-  
11 tracting any sales promotion, marketing  
12 and after-sales service costs, royalties,  
13 shipping and packing costs, and nonallow-  
14 able interest costs that are included in the  
15 portion of the total cost allocated to the  
16 automotive good; or

17 (iii) reasonably allocating each cost  
18 that forms part of the total cost incurred  
19 with respect to the automotive good so that  
20 the aggregate of these costs does not in-  
21 clude any sales promotion, marketing and  
22 after-sales service costs, royalties, shipping  
23 and packing costs, or nonallowable interest  
24 costs.

25 (f) VALUE OF MATERIALS.—

1           (1) IN GENERAL.—For the purpose of calcu-  
2           lating the regional value-content of a good under  
3           subsection (e), and for purposes of applying the de  
4           minimis rules under subsection (c), the value of a  
5           material is—

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

9                   (B) in the case of a material acquired in  
10                  the territory in which the good is produced, the  
11                  value, determined in accordance with Articles 1  
12                  through 8, article 15, and the corresponding in-  
13                  terpretive notes of the Agreement on Implemen-  
14                  tation of Article VII of the General Agreement  
15                  on Tariffs and Trade 1994 referred to in sec-  
16                  tion 101(d)(8) of the Uruguay Round Agree-  
17                  ments Act, as set forth in regulations promul-  
18                  gated by the Secretary of the Treasury pro-  
19                  viding for the application of such Articles in the  
20                  absence of an importation; or

21                  (C) in the case of a material that is self-  
22                  produced, the sum of—

23                          (i) all expenses incurred in the pro-  
24                          duction of the material, including general  
25                          expenses; and

1                   (ii) an amount for profit equivalent to  
2                   the profit added in the normal course of  
3                   trade.

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

6                   (A) ORIGINATING MATERIAL.—The fol-  
7                   lowing expenses, if not included in the value of  
8                   an originating material calculated under para-  
9                   graph (1), may be added to the value of the  
10                  originating material:

11                  (i) The costs of freight, insurance,  
12                  packing, and all other costs incurred in  
13                  transporting the material within or be-  
14                  tween the territory of Australia, the United  
15                  States, or both, to the location of the pro-  
16                  ducer.

17                  (ii) Duties, taxes, and customs broker-  
18                  age fees on the material paid in the terri-  
19                  tory of Australia, the United States, or  
20                  both, other than duties or taxes that are  
21                  waived, refunded, refundable, or otherwise  
22                  recoverable, including credit against duty  
23                  or tax paid or payable.

24                  (iii) The cost of waste and spoilage re-  
25                  sulting from the use of the material in the

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

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

8 (i) The costs of freight, insurance,  
9 packing, and all other costs incurred in  
10 transporting the material within or be-  
11 tween the territory of Australia, the United  
12 States, or both, to the location of the pro-  
13 ducer.

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

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

1 (iv) The cost of processing incurred in  
2 the territory of Australia, the United  
3 States, or both, in the production of the  
4 nonoriginating material.

5 (v) The cost of originating materials  
6 used in the production of the nonorigi-  
7 nating material in the territory of Aus-  
8 tralia, the United States, or both.

9 (g) ACCESSORIES, SPARE PARTS, OR TOOLS.—

10 (1) IN GENERAL.—Subject to paragraph (2),  
11 accessories, spare parts, or tools delivered with a  
12 good that form part of the good's standard acces-  
13 sories, spare parts, or tools shall—

14 (A) be treated as originating goods if the  
15 good is an originating good; and

16 (B) be disregarded in determining whether  
17 all the nonoriginating materials used in the pro-  
18 duction of the good undergo the applicable  
19 change in tariff classification set out in Annex  
20 5-A of the Agreement.

21 (2) CONDITIONS.—Paragraph (1) shall apply  
22 only if—

23 (A) the accessories, spare parts, or tools  
24 are not invoiced separately from the good;

1 (B) the quantities and value of the acces-  
2 sories, spare parts, or tools are customary for  
3 the good; and

4 (C) if the good is subject to a regional  
5 value-content requirement, the value of the ac-  
6 cessories, spare parts, or tools is taken into ac-  
7 count as originating or nonoriginating mate-  
8 rials, as the case may be, in calculating the re-  
9 gional value-content of the good.

10 (h) FUNGIBLE GOODS AND MATERIALS.—

11 (1) IN GENERAL.—

12 (A) CLAIM FOR PREFERENTIAL TREAT-  
13 MENT.—A person claiming that a fungible good  
14 or fungible material is an originating good may  
15 base the claim either on the physical segrega-  
16 tion of the fungible good or fungible material or  
17 by using an inventory management method with  
18 respect to the fungible good or fungible mate-  
19 rial.

20 (B) INVENTORY MANAGEMENT METHOD.—

21 In this subsection, the term “inventory manage-  
22 ment method” means—

- 23 (i) averaging;  
24 (ii) “last-in, first-out”;  
25 (iii) “first-in, first-out”; or

1 (iv) any other method—

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

7 (II) otherwise accepted by that  
8 country.

9 (2) ELECTION OF INVENTORY METHOD.—A  
10 person selecting an inventory management method  
11 under paragraph (1) for a particular fungible good  
12 or fungible material shall continue to use that meth-  
13 od for that fungible good or fungible material  
14 throughout the fiscal year of that person.

15 (i) PACKAGING MATERIALS AND CONTAINERS FOR  
16 RETAIL SALE.—Packaging materials and containers in  
17 which a good is packaged for retail sale, if classified with  
18 the good, shall be disregarded in determining whether all  
19 the nonoriginating materials used in the production of the  
20 good undergo the applicable change in tariff classification  
21 set out in Annex 4–A or Annex 5–A of the Agreement,  
22 and, if the good is subject to a regional value-content re-  
23 quirement, the value of such packaging materials and con-  
24 tainers shall be taken into account as originating or non-

1 originating materials, as the case may be, in calculating  
2 the regional value-content of the good.

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

6 (1) the nonoriginating materials used in the  
7 production of a good undergo the applicable change  
8 in tariff classification set out in Annex 4–A or  
9 Annex 5–A of the Agreement; and

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

12 (k) INDIRECT MATERIALS.—An indirect material  
13 shall be treated as an originating material without regard  
14 to where it is produced, and its value shall be the cost  
15 registered in the accounting records of the producer of the  
16 good.

17 (l) THIRD COUNTRY OPERATIONS.—A good that has  
18 undergone production necessary to qualify as an origi-  
19 nating good under subsection (b) shall not be considered  
20 to be an originating good if, subsequent to that produc-  
21 tion, the good undergoes further production or any other  
22 operation outside the territory of Australia or the United  
23 States, other than unloading, reloading, or any other oper-  
24 ation necessary to preserve the good in good condition or

1 to transport the good to the territory of Australia or the  
2 United States.

3 (m) TEXTILE AND APPAREL GOODS CLASSIFIABLE  
4 AS GOODS PUT UP IN SETS.—Notwithstanding the rules  
5 set forth in Annex 4–A of the Agreement, textile or ap-  
6 parel goods classifiable as goods put up in sets for retail  
7 sale as provided for in General Rule of Interpretation 3  
8 of the HTS shall not be considered to be originating goods  
9 unless each of the goods in the set is an originating good  
10 or the total value of the nonoriginating goods in the set  
11 does not exceed 10 percent of the value of the set deter-  
12 mined for purposes of assessing customs duties.

13 (n) DEFINITIONS.—In this section:

14 (1) ADJUSTED VALUE.—The term “adjusted  
15 value” means the value determined under Articles 1  
16 through 8, Article 15, and the corresponding inter-  
17 pretive notes of the Agreement on Implementation of  
18 Article VII of the General Agreement on Tariffs and  
19 Trade 1994 referred to in section 101(d)(8) of the  
20 Uruguay Round Agreements Act, adjusted to ex-  
21 clude any costs, charges, or expenses incurred for  
22 transportation, insurance, and related services inci-  
23 dent to the international shipment of the good from  
24 the country of exportation to the place of importa-  
25 tion.

1           (2) CLASS OF MOTOR VEHICLES.—The term  
2           “class of motor vehicles” means any one of the fol-  
3           lowing categories of motor vehicles:

4                   (A) Motor vehicles provided for in sub-  
5                   heading 8701.20, 8704.10, 8704.22, 8704.23,  
6                   8704.32, or 8704.90, or heading 8705 or 8706,  
7                   or motor vehicles for the transport of 16 or  
8                   more persons provided for in subheading  
9                   8702.10 or 8702.90.

10                   (B) Motor vehicles provided for in sub-  
11                   heading 8701.10 or any of subheadings  
12                   8701.30 through 8701.90.

13                   (C) Motor vehicles for the transport of 15  
14                   or fewer persons provided for in subheading  
15                   8702.10 or 8702.90, or motor vehicles provided  
16                   for in subheading 8704.21 or 8704.31.

17                   (D) Motor vehicles provided for in any of  
18                   subheadings 8703.21 through 8703.90.

19           (3) FUNGIBLE GOOD OR FUNGIBLE MATE-  
20           RIAL.—The term “fungible good” or “fungible mate-  
21           rial” means a good or material, as the case may be,  
22           that is interchangeable with another good or mate-  
23           rial for commercial purposes and the properties of  
24           which are essentially identical to such other good or  
25           material.

1           (4) GENERALLY ACCEPTED ACCOUNTING PRIN-  
2           CIPLES.—The term “generally accepted accounting  
3           principles” means the recognized consensus or sub-  
4           stantial authoritative support in the territory of Aus-  
5           tralia or the United States, as the case may be, with  
6           respect to the recording of revenues, expenses, costs,  
7           assets, and liabilities, the disclosure of information,  
8           and the preparation of financial statements. These  
9           standards may encompass broad guidelines of gen-  
10          eral application as well as detailed standards, prac-  
11          tices, and procedures.

12          (5) GOOD WHOLLY OBTAINED OR PRODUCED  
13          ENTIRELY IN THE TERRITORY OF AUSTRALIA, THE  
14          UNITED STATES, OR BOTH.—The term “good wholly  
15          obtained or produced entirely in the territory of Aus-  
16          tralia, the United States, or both” means—

17                 (A) a mineral good extracted in the terri-  
18                 tory of Australia, the United States, or both;

19                 (B) a vegetable good, as such goods are  
20                 provided for in the HTS, harvested in the terri-  
21                 tory of Australia, the United States, or both;

22                 (C) a live animal born and raised in the  
23                 territory of Australia, the United States, or  
24                 both;

1 (D) a good obtained from hunting, trap-  
2 ping, fishing, or aquaculture conducted in the  
3 territory of Australia, the United States, or  
4 both;

5 (E) a good (fish, shellfish, and other ma-  
6 rine life) taken from the sea by vessels reg-  
7 istered or recorded with Australia or the United  
8 States and flying the flag of that country;

9 (F) a good produced exclusively from prod-  
10 ucts referred to in subparagraph (E) on board  
11 factory ships registered or recorded with Aus-  
12 tralia or the United States and flying the flag  
13 of that country;

14 (G) a good taken by Australia or the  
15 United States or a person of Australia or the  
16 United States from the seabed or beneath the  
17 seabed outside territorial waters, if Australia or  
18 the United States has rights to exploit such  
19 seabed;

20 (H) a good taken from outer space, if such  
21 good is obtained by Australia or the United  
22 States or a person of Australia or the United  
23 States and not processed in the territory of a  
24 country other than Australia or the United  
25 States;

1 (I) waste and scrap derived from—

2 (i) production in the territory of Aus-  
3 tralia, the United States, or both; or

4 (ii) used goods collected in the terri-  
5 tory of Australia, the United States, or  
6 both, if such goods are fit only for the re-  
7 covery of raw materials;

8 (J) a recovered good derived in the terri-  
9 tory of Australia or the United States from  
10 goods that have passed their life expectancy, or  
11 are no longer usable due to defects, and utilized  
12 in the territory of that country in the produc-  
13 tion of remanufactured goods; or

14 (K) a good produced in the territory of  
15 Australia, the United States, or both,  
16 exclusively—

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

19 (ii) from the derivatives of goods re-  
20 ferred to in clause (i),

21 at any stage of production.

22 (6) INDIRECT MATERIAL.—The term “indirect  
23 material” means a good used in the production, test-  
24 ing, or inspection of a good but not physically incor-  
25 porated into the good, or a good used in the mainte-

1 nance of buildings or the operation of equipment as-  
2 sociated with the production of a good, including—

3 (A) fuel and energy;

4 (B) tools, dies, and molds;

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

7 (D) lubricants, greases, compounding ma-  
8 terials, and other materials used in production  
9 or used to operate equipment or buildings;

10 (E) gloves, glasses, footwear, clothing,  
11 safety equipment, and supplies;

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

14 (G) catalysts and solvents; and

15 (H) any other goods that are not incor-  
16 porated into the good but the use of which in  
17 the production of the good can reasonably be  
18 demonstrated to be a part of that production.

19 (7) MATERIAL.—The term “material” means a  
20 good that is used in the production of another good.

21 (8) MATERIAL THAT IS SELF-PRODUCED.—The  
22 term “material that is self-produced” means an orig-  
23 inating material that is produced by a producer of  
24 a good and used in the production of that good.

1           (9) MODEL LINE.—The term “model line”  
2 means a group of motor vehicles having the same  
3 platform or model name.

4           (10) NONALLOWABLE INTEREST COSTS.—The  
5 term “nonallowable interest costs” means interest  
6 costs incurred by a producer that exceed 700 basis  
7 points above the applicable official interest rate for  
8 comparable maturities of the country (whether Aus-  
9 tralia or the United States).

10          (11) NONORIGINATING MATERIAL.—The term  
11 “nonoriginating material” means a material that  
12 does not qualify as originating under this section.

13          (12) PREFERENTIAL TREATMENT.—The term  
14 “preferential treatment” means the customs duty  
15 rate, and the treatment under article 2.12 of the  
16 Agreement, that are applicable to an originating  
17 good pursuant to the Agreement.

18          (13) PRODUCER.—The term “producer” means  
19 a person who engages in the production of a good  
20 in the territory of Australia or the United States.

21          (14) PRODUCTION.—The term “production”  
22 means growing, raising, mining, harvesting, fishing,  
23 trapping, hunting, manufacturing, processing, as-  
24 sembling, or disassembling a good.

1           (15) REASONABLY ALLOCATE.—The term “rea-  
2           sonably allocate” means to apportion in a manner  
3           that would be appropriate under generally accepted  
4           accounting principles.

5           (16) RECOVERED GOODS.—The term “recov-  
6           ered goods” means materials in the form of indi-  
7           vidual parts that result from—

8                   (A) the complete disassembly of goods  
9                   which have passed their life expectancy, or are  
10                  no longer usable due to defects, into individual  
11                  parts; and

12                   (B) the cleaning, inspecting, or testing, or  
13                  other processing that is necessary for improve-  
14                  ment to sound working condition of such indi-  
15                  vidual parts.

16           (17) REMANUFACTURED GOOD.—The term “re-  
17           manufactured good” means an industrial good that  
18           is assembled in the territory of Australia or the  
19           United States, that is classified under chapter 84,  
20           85, or 87 of the HTS or heading 9026, 9031, or  
21           9032, other than a good classified under heading  
22           8418 or 8516 or any of headings 8701 through  
23           8706, and that—

24                   (A) is entirely or partially comprised of re-  
25                  covered goods;

1 (B) has a similar life expectancy to, and  
2 meets the same performance standards as, a  
3 like good that is new; and

4 (C) enjoys a factory warranty similar to a  
5 like good that is new.

6 (18) TOTAL COST.—The term “total cost”  
7 means all product costs, period costs, and other  
8 costs for a good incurred in the territory of Aus-  
9 tralia, the United States, or both.

10 (19) USED.—The term “used” means used or  
11 consumed in the production of goods.

12 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

15 (A) the provisions set out in Annex 4–A  
16 and Annex 5–A of the Agreement; and

17 (B) any additional subordinate category  
18 necessary to carry out this title consistent with  
19 the Agreement.

20 (2) MODIFICATIONS.—

21 (A) IN GENERAL.—Subject to the consulta-  
22 tion and layover provisions of section 104, the  
23 President may proclaim modifications to the  
24 provisions proclaimed under the authority of  
25 paragraph (1)(A), other than provisions of

1 chapters 50 through 63 of the HTS, as in-  
2 cluded in Annex 4–A of the Agreement.

3 (B) ADDITIONAL PROCLAMATIONS.—Not-  
4 withstanding subparagraph (A), and subject to  
5 the consultation and layover provisions of sec-  
6 tion 104, the President may proclaim—

7 (i) modifications to the provisions pro-  
8 claimed under the authority of paragraph  
9 (1)(A) as are necessary to implement an  
10 agreement with Australia pursuant to arti-  
11 cle 4.2.5 of the Agreement; and

12 (ii) before the end of the 1-year period  
13 beginning on the date of the enactment of  
14 this Act, modifications to correct any typo-  
15 graphical, clerical, or other nonsubstantive  
16 technical error regarding the provisions of  
17 chapters 50 through 63 of the HTS, as in-  
18 cluded in Annex 4–A of the Agreement.

19 **SEC. 204. CUSTOMS USER FEES.**

20 Section 13031(b) of the Consolidated Omnibus Budg-  
21 et Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is  
22 amended by adding after paragraph (13) the following:

23 “(14) No fee may be charged under subsection (a)  
24 (9) or (10) with respect to goods that qualify as origi-  
25 nating goods under section 203 of the United States-Aus-

1 tralia Free Trade Agreement Implementation Act. Any  
2 service for which an exemption from such fee is provided  
3 by reason of this paragraph may not be funded with  
4 money contained in the Customs User Fee Account.”.

5 **SEC. 205. DISCLOSURE OF INCORRECT INFORMATION.**

6 Section 592(c) of the Tariff Act of 1930 (19 U.S.C.  
7 1592(c)) is amended—

8 (1) by redesignating paragraph (8) as para-  
9 graph (9); and

10 (2) by inserting after paragraph (7) the fol-  
11 lowing new paragraph:

12 “(8) PRIOR DISCLOSURE REGARDING CLAIMS  
13 UNDER THE UNITED STATES-AUSTRALIA FREE  
14 TRADE AGREEMENT.—

15 “(A) IN GENERAL.—An importer shall not  
16 be subject to penalties under subsection (a) for  
17 making an incorrect claim that a good qualifies  
18 as an originating good under section 203 of the  
19 United States-Australia Free Trade Agreement  
20 Implementation Act if the importer, in accord-  
21 ance with regulations issued by the Secretary of  
22 the Treasury, voluntarily and promptly makes a  
23 corrected declaration and pays any duties  
24 owing.

1           “(B) TIME PERIODS FOR MAKING CORREC-  
2           TIONS.—In the regulations referred to in sub-  
3           paragraph (A), the Secretary of the Treasury is  
4           authorized to prescribe time periods for making  
5           a corrected declaration and paying duties owing  
6           under subparagraph (A), if such periods are not  
7           shorter than 1 year following the date on which  
8           the importer makes the incorrect claim.”.

9   **SEC. 206. ENFORCEMENT RELATING TO TRADE IN TEXTILE**  
10                           **AND APPAREL GOODS.**

11           (a) ACTION DURING VERIFICATION.—

12                   (1) IN GENERAL.—If the Secretary of the  
13           Treasury requests the Government of Australia to  
14           conduct a verification pursuant to article 4.3 of the  
15           Agreement for purposes of making a determination  
16           under paragraph (2), the President may direct the  
17           Secretary to take appropriate action described in  
18           subsection (b) while the verification is being con-  
19           ducted.

20                   (2) DETERMINATION.—A determination under this  
21           paragraph is a determination—

22                           (A) that an exporter or producer in Aus-  
23           tralia is complying with applicable customs  
24           laws, regulations, procedures, requirements, or

1 practices affecting trade in textile or apparel  
2 goods; or

3 (B) that a claim that a textile or apparel  
4 good exported or produced by such exporter or  
5 producer—

6 (i) qualifies as an originating good  
7 under section 203 of this Act; or

8 (ii) is a good of Australia,  
9 is accurate.

10 (b) APPROPRIATE ACTION DESCRIBED.—Appropriate  
11 action under subsection (a)(1) includes—

12 (1) suspension of liquidation of the entry of any  
13 textile or apparel good exported or produced by the  
14 person that is the subject of a verification under  
15 subsection (a)(1) regarding compliance described in  
16 subsection (a)(2)(A), in a case in which the request  
17 for verification was based on a reasonable suspicion  
18 of unlawful activity related to such goods; and

19 (2) suspension of liquidation of the entry of a  
20 textile or apparel good for which a claim has been  
21 made that is the subject of a verification under sub-  
22 section (a)(1) regarding a claim described in sub-  
23 section (a)(2)(B).

24 (c) ACTION WHEN INFORMATION IS INSUFFI-  
25 CIENT.—If the Secretary of the Treasury determines that

1 the information obtained within 12 months after making  
2 a request for a verification under subsection (a)(1) is in-  
3 sufficient to make a determination under subsection  
4 (a)(2), the President may direct the Secretary to take ap-  
5 propriate action described in subsection (d) until such  
6 time as the Secretary receives information sufficient to  
7 make a determination under subsection (a)(2) or until  
8 such earlier date as the President may direct.

9 (d) APPROPRIATE ACTION DESCRIBED.—Appro-  
10 priate action referred to in subsection (c) includes—

11 (1) publication of the name and address of the  
12 person that is the subject of the verification;

13 (2) denial of preferential tariff treatment under  
14 the Agreement to—

15 (A) any textile or apparel good exported or  
16 produced by the person that is the subject of a  
17 verification under subsection (a)(1) regarding  
18 compliance described in subsection (a)(2)(A); or

19 (B) a textile or apparel good for which a  
20 claim has been made that is the subject of a  
21 verification under subsection (a)(1) regarding a  
22 claim described in subsection (a)(2)(B); and

23 (3) denial of entry into the United States of—

24 (A) any textile or apparel good exported or  
25 produced by the person that is the subject of a

1 verification under subsection (a)(1) regarding  
2 compliance described in subsection (a)(2)(A); or  
3 (B) a textile or apparel good for which a  
4 claim has been made that is the subject of a  
5 verification under subsection (a)(1) regarding a  
6 claim described in subsection (a)(2)(B).

7 **SEC. 207. REGULATIONS.**

8 (a) The Secretary of the Treasury shall prescribe  
9 such regulations as may be necessary to carry out—

10 (1) subsections (a) through (n) of section 203  
11 and section 204;

12 (2) amendments to existing law made by the  
13 sections referred to in paragraph (1); and

14 (3) proclamations issued under section 203(o).

15 **TITLE III—RELIEF FROM**  
16 **IMPORTS**

17 **SEC. 301. DEFINITIONS.**

18 As used in this title:

19 (1) AUSTRALIAN ARTICLE.—The term “Aus-  
20 tralian article” means an article that qualifies as an  
21 originating good under section 203(b) of this Act.

22 (2) AUSTRALIAN TEXTILE OR APPAREL ARTI-  
23 CLE.—The term “Australian textile or apparel arti-  
24 cle” means an article—

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

5 (B) that is an Australian article.

6 (3) COMMISSION.—The term “Commission”  
7 means the United States International Trade Com-  
8 mission.

9 **Subtitle A—Relief From Imports**  
10 **Benefiting From the Agreement**

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

12 (a) FILING OF PETITION.—

13 (1) IN GENERAL.—A petition requesting action  
14 under this subtitle for the purpose of adjusting to  
15 the obligations of the United States under the  
16 Agreement may be filed with the Commission by an  
17 entity, including a trade association, firm, certified  
18 or recognized union, or group of workers, that is  
19 representative of an industry. The Commission shall  
20 transmit a copy of any petition filed under this sub-  
21 section to the United States Trade Representative.

22 (2) PROVISIONAL RELIEF.—An entity filing a  
23 petition under this subsection may request that pro-  
24 visional relief be provided as if the petition had been

1 filed under section 202(a) of the Trade Act of 1974  
2 (19 U.S.C. 2252(a)).

3 (3) CRITICAL CIRCUMSTANCES.—Any allegation  
4 that critical circumstances exist shall be included in  
5 the petition.

6 (b) INVESTIGATION AND DETERMINATION.—Upon  
7 the filing of a petition under subsection (a), the Commis-  
8 sion, unless subsection (d) applies, shall promptly initiate  
9 an investigation to determine whether, as a result of the  
10 reduction or elimination of a duty provided for under the  
11 Agreement, an Australian article is being imported into  
12 the United States in such increased quantities, in absolute  
13 terms or relative to domestic production, and under such  
14 conditions that imports of the Australian article constitute  
15 a substantial cause of serious injury or threat thereof to  
16 the domestic industry producing an article that is like, or  
17 directly competitive with, the imported article.

18 (c) APPLICABLE PROVISIONS.—The following provi-  
19 sions of section 202 of the Trade Act of 1974 (19 U.S.C.  
20 2252) apply with respect to any investigation initiated  
21 under subsection (b):

22 (1) Paragraphs (1)(B) and (3) of subsection  
23 (b).

24 (2) Subsection (c).

25 (3) Subsection (d).

1 (4) Subsection (i).

2 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No  
3 investigation may be initiated under this section with re-  
4 spect to any Australian article if, after the date on which  
5 the Agreement enters into force, import relief has been  
6 provided with respect to that Australian article under this  
7 subtitle.

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

9 (a) DETERMINATION.—Not later than 120 days (180  
10 days if critical circumstances have been alleged) after the  
11 date on which an investigation is initiated under section  
12 311(b) with respect to a petition, the Commission shall  
13 make the determination required under that section.

14 (b) APPLICABLE PROVISIONS.—For purposes of this  
15 subtitle, the provisions of paragraphs (1), (2), and (3) of  
16 section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
17 1330(d) (1), (2), and (3)) shall be applied with respect  
18 to determinations and findings made under this section  
19 as if such determinations and findings were made under  
20 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

21 (c) ADDITIONAL FINDING AND RECOMMENDATION IF  
22 DETERMINATION AFFIRMATIVE.—If the determination  
23 made by the Commission under subsection (a) with respect  
24 to imports of an article is affirmative, or if the President  
25 may consider a determination of the Commission to be an

1 affirmative determination as provided for under paragraph  
2 (1) of section 330(d) of the Tariff Act of 1930) (19 U.S.C.  
3 1330(d)), the Commission shall find, and recommend to  
4 the President in the report required under subsection (d),  
5 the amount of import relief that is necessary to remedy  
6 or prevent the injury found by the Commission in the de-  
7 termination and to facilitate the efforts of the domestic  
8 industry to make a positive adjustment to import competi-  
9 tion. The import relief recommended by the Commission  
10 under this subsection shall be limited to that described in  
11 section 313(c). Only those members of the Commission  
12 who voted in the affirmative under subsection (a) are eligi-  
13 ble to vote on the proposed action to remedy or prevent  
14 the injury found by the Commission. Members of the Com-  
15 mission who did not vote in the affirmative may submit,  
16 in the report required under subsection (d), separate views  
17 regarding what action, if any, should be taken to remedy  
18 or prevent the injury.

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

1           (1) the determination made under subsection  
2           (a) and an explanation of the basis for the deter-  
3           mination;

4           (2) if the determination under subsection (a) is  
5           affirmative, any findings and recommendations for  
6           import relief made under subsection (c) and an ex-  
7           planation of the basis for each recommendation; and

8           (3) any dissenting or separate views by mem-  
9           bers of the Commission regarding the determination  
10          and recommendation referred to in paragraphs (1)  
11          and (2).

12          (e) PUBLIC NOTICE.—Upon submitting a report to  
13          the President under subsection (d), the Commission shall  
14          promptly make public such report (with the exception of  
15          information which the Commission determines to be con-  
16          fidential) and shall cause a summary thereof to be pub-  
17          lished in the Federal Register.

18          **SEC. 313. PROVISION OF RELIEF.**

19          (a) IN GENERAL.—Not later than the date that is  
20          30 days after the date on which the President receives the  
21          report of the Commission in which the Commission's de-  
22          termination under section 312(a) is affirmative, or which  
23          contains a determination under section 312(a) that the  
24          President considers to be affirmative under paragraph (1)  
25          of section 330(d) of the Tariff Act of 1930 (19 U.S.C.

1 1330(d)(1)), the President, subject to subsection (b), shall  
2 provide relief from imports of the article that is the subject  
3 of such determination to the extent that the President de-  
4 termines necessary to remedy or prevent the injury found  
5 by the Commission and to facilitate the efforts of the do-  
6 mestic industry to make a positive adjustment to import  
7 competition.

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

12 (c) NATURE OF RELIEF.—

13 (1) IN GENERAL.—The import relief (including  
14 provisional relief) that the President is authorized to  
15 provide under this section with respect to imports of  
16 an article is as follows:

17 (A) The suspension of any further reduc-  
18 tion provided for under Annex 2–B of the  
19 Agreement in the duty imposed on such article.

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

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

1 (ii) the column 1 general rate of duty  
2 imposed under the HTS on like articles on  
3 the day before the date on which the  
4 Agreement enters into force.

5 (C) In the case of a duty applied on a sea-  
6 sonal basis to such article, an increase in the  
7 rate of duty imposed on the article to a level  
8 that does not exceed the lesser of—

9 (i) the column 1 general rate of duty  
10 imposed under the HTS on like articles for  
11 the immediately preceding corresponding  
12 season; or

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

17 (2) PROGRESSIVE LIBERALIZATION.—If the pe-  
18 riod for which import relief is provided under this  
19 section is greater than 1 year, the President shall  
20 provide for the progressive liberalization (described  
21 in article 9.2.7 of the Agreement) of such relief at  
22 regular intervals during the period in which the re-  
23 lief is in effect.

24 (d) PERIOD OF RELIEF.—

1           (1) IN GENERAL.—Subject to paragraph (2),  
2           any import relief that the President provides under  
3           this section may not be in effect for more than 2  
4           years.

5           (2) EXTENSION.—

6           (A) IN GENERAL.—Subject to subpara-  
7           graph (C), the President, after receiving an af-  
8           firmative determination from the Commission  
9           under subparagraph (B), may extend the effec-  
10          tive period of any import relief provided under  
11          this section if the President determines that—

12                 (i) the import relief continues to be  
13                 necessary to remedy or prevent serious in-  
14                 jury and to facilitate adjustment by the do-  
15                 mestic industry to import competition; and

16                 (ii) there is evidence that the industry  
17                 is making a positive adjustment to import  
18                 competition.

19          (B) ACTION BY COMMISSION.—(i) Upon a  
20          petition on behalf of the industry concerned  
21          that is filed with the Commission not earlier  
22          than the date which is 9 months, and not later  
23          than the date which is 6 months, before the  
24          date any action taken under subsection (a) is to  
25          terminate, the Commission shall conduct an in-

1           vestigation to determine whether action under  
2           this section continues to be necessary to remedy  
3           or prevent serious injury and whether there is  
4           evidence that the industry is making a positive  
5           adjustment to import competition.

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

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

22          (C) PERIOD OF IMPORT RELIEF.—Any im-  
23          port relief provided under this section, including  
24          any extensions thereof, may not, in the aggre-  
25          gate, be in effect for more than 4 years.

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

4 (1) the rate of duty on that article after such  
5 termination and on or before December 31 of the  
6 year in which such termination occurs shall be the  
7 rate that, according to the Schedule of the United  
8 States to Annex 2–B of the Agreement for the  
9 staged elimination of the tariff, would have been in  
10 effect 1 year after the provision of relief under sub-  
11 section (a); and

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

15 (A) the applicable NTR (MFN) rate of  
16 duty for that article set out in the Schedule of  
17 the United States to Annex 2–B of the Agree-  
18 ment; or

19 (B) the rate of duty resulting from the  
20 elimination of the tariff in equal annual stages  
21 ending on the date set out in the Schedule of  
22 the United States to Annex 2–B of the Agree-  
23 ment for the elimination of the tariff.

1 (f) ARTICLES EXEMPT FROM RELIEF.—No import  
2 relief may be provided under this section on any article  
3 that—

4 (1) is subject to—

5 (A) import relief under subtitle B; or

6 (B) an assessment of additional duty  
7 under subsection (b), (c), or (d) of section 202;

8 or

9 (2) has been subject to import relief under this  
10 subtitle after the date on which the Agreement en-  
11 ters into force.

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

13 (a) GENERAL RULE.—Subject to subsection (b), no  
14 import relief may be provided under this subtitle after the  
15 date that is 10 years after the date on which the Agree-  
16 ment enters into force.

17 (b) EXCEPTION.—If an article for which relief is pro-  
18 vided under this subtitle is an article for which the period  
19 for tariff elimination, set out in the Schedule of the United  
20 States to Annex 2-B of the Agreement, is greater than  
21 10 years, no relief under this subtitle may be provided for  
22 that article after the date on which such period ends.

23 (c) PRESIDENTIAL DETERMINATION.—Import relief  
24 may be provided under this subtitle in the case of an Aus-  
25 tralian article after the date on which such relief would,

1 but for this subsection, terminate under subsection (a) or  
2 (b), if the President determines that Australia has con-  
3 sented to such relief.

4 **SEC. 315. COMPENSATION AUTHORITY.**

5 For purposes of section 123 of the Trade Act of 1974  
6 (19 U.S.C. 2133), any import relief provided by the Presi-  
7 dent under section 313 shall be treated as action taken  
8 under chapter 1 of title II of such Act.

9 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

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

12 (1) by striking “and”; and

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

16 **Subtitle B—Textile and Apparel**  
17 **Safeguard Measures**

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

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

1 (b) ALLEGATION OF CRITICAL CIRCUMSTANCES.—An  
2 interested party filing a request under this section may—

3 (1) allege that critical circumstances exist such  
4 that delay in the provision of relief would cause  
5 damage that would be difficult to repair; and

6 (2) based on such allegation, request that relief  
7 be provided on a provisional basis.

8 (c) PUBLICATION OF REQUEST.—If the President de-  
9 termines that the request under subsection (a) provides  
10 the information necessary for the request to be considered,  
11 the President shall cause to be published in the Federal  
12 Register a notice of commencement of consideration of the  
13 request, and notice seeking public comments regarding the  
14 request. The notice shall include a summary of the request  
15 and the dates by which comments and rebuttals must be  
16 received.

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

18 (a) DETERMINATION.—

19 (1) IN GENERAL.—If a positive determination is  
20 made under section 321(c), the President shall de-  
21 termine whether, as a result of the reduction or  
22 elimination of a duty under the Agreement, an Aus-  
23 tralian textile or apparel article is being imported  
24 into the United States in such increased quantities,  
25 in absolute terms or relative to the domestic market

1 for that article, and under such conditions as to  
2 cause serious damage, or actual threat thereof, to a  
3 domestic industry producing an article that is like,  
4 or directly competitive with, the imported article.

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

7 (A) shall examine the effect of increased  
8 imports on the domestic industry, as reflected  
9 in changes in such relevant economic factors as  
10 output, productivity, utilization of capacity, in-  
11 ventories, market share, exports, wages, em-  
12 ployment, domestic prices, profits, and invest-  
13 ment, none of which is necessarily decisive; and

14 (B) shall not consider changes in tech-  
15 nology or consumer preference as factors sup-  
16 porting a determination of serious damage or  
17 actual threat thereof.

18 (b) PROVISION OF RELIEF.—

19 (1) IN GENERAL.—If a determination under  
20 subsection (a) is affirmative, the President may pro-  
21 vide relief from imports of the article that is the  
22 subject of such determination, as described in para-  
23 graph (2), to the extent that the President deter-  
24 mines necessary to remedy or prevent the serious

1 damage and to facilitate adjustment by the domestic  
2 industry to import competition.

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

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

11 (B) the column 1 general rate of duty im-  
12 posed under the HTS on like articles on the  
13 day before the date on which the Agreement en-  
14 ters into force.

15 (c) CRITICAL CIRCUMSTANCES.—

16 (1) PRESIDENTIAL DETERMINATION.—When a  
17 request filed under section 321(a) contains an alle-  
18 gation of critical circumstances and a request for  
19 provisional relief under section 321(b), the President  
20 shall, not later than 60 days after the request is  
21 filed, determine, on the basis of available informa-  
22 tion, whether—

23 (A) there is clear evidence that—

24 (i) imports from Australia have in-  
25 creased as the result of the reduction or

1 elimination of a customs duty under the  
2 Agreement; and

3 (ii) such imports are causing serious  
4 damage, or actual threat thereof, to the  
5 domestic industry producing an article like  
6 or directly competitive with the imported  
7 article; and

8 (B) delay in taking action under this sub-  
9 title would cause damage to that industry that  
10 would be difficult to repair.

11 (2) EXTENT OF PROVISIONAL RELIEF.—If the  
12 determinations under subparagraphs (A) and (B) of  
13 paragraph (1) are affirmative, the President shall  
14 determine the extent of provisional relief that is nec-  
15 essary to remedy or prevent the serious damage. The  
16 nature of the provisional relief available shall be the  
17 relief described in subsection (b)(2). Within 30 days  
18 after making affirmative determinations under sub-  
19 paragraphs (A) and (B) of paragraph (1), the Presi-  
20 dent, if the President considers provisional relief to  
21 be warranted, shall provide, for a period not to ex-  
22 ceed 200 days, such provisional relief that the Presi-  
23 dent considers necessary to remedy or prevent the  
24 serious damage.

1           (3) SUSPENSION OF LIQUIDATION.—If provi-  
2           sional relief is provided under paragraph (2), the  
3           President shall order the suspension of liquidation of  
4           all imported articles subject to the affirmative deter-  
5           minations under subparagraphs (A) and (B) of para-  
6           graph (1) that are entered, or withdrawn from ware-  
7           house for consumption, on or after the date of the  
8           determinations.

9           (4) TERMINATION OF PROVISIONAL RELIEF.—

10           (A) IN GENERAL.—Any provisional relief  
11           implemented under this subsection with respect  
12           to an imported article shall terminate on the  
13           day on which—

14                   (i) the President makes a negative de-  
15                   termination under subsection (a) regarding  
16                   serious damage or actual threat thereof by  
17                   imports of such article;

18                   (ii) action described in subsection (b)  
19                   takes effect with respect to such article;

20                   (iii) a decision by the President not to  
21                   take any action under subsection (b) with  
22                   respect to such article becomes final; or

23                   (iv) the President determines that, be-  
24                   cause of changed circumstances, such relief  
25                   is no longer warranted.

1 (B) SUSPENSION OF LIQUIDATION.—Any  
2 suspension of liquidation ordered under para-  
3 graph (3) with respect to an imported article  
4 shall terminate on the day on which provisional  
5 relief is terminated under subparagraph (A)  
6 with respect to the article.

7 (C) RATES OF DUTY.—If an increase in, or  
8 the imposition of, a duty that is provided under  
9 subsection (b) on an imported article is dif-  
10 ferent from a duty increase or imposition that  
11 was provided for such an article under this sub-  
12 section, then the entry of any such article for  
13 which liquidation was suspended under para-  
14 graph (3) shall be liquidated at whichever of  
15 such rates of duty is lower.

16 (D) RATE OF DUTY IF PROVISIONAL RE-  
17 LIEF.—If provisional relief is provided under  
18 this subsection with respect to an imported arti-  
19 cle and neither a duty increase nor a duty im-  
20 position is provided under subsection (b) for  
21 such article, the entry of any such article for  
22 which liquidation was suspended under para-  
23 graph (3) shall be liquidated at the rate of duty  
24 that applied before the provisional relief was  
25 provided.

1 **SEC. 323. PERIOD OF RELIEF.**

2 (a) IN GENERAL.—Subject to subsection (b), the im-  
3 port relief that the President provides under subsections  
4 (b) and (c) of section 322 may not, in the aggregate, be  
5 in effect for more than 2 years.

6 (b) EXTENSION.—

7 (1) IN GENERAL.—Subject to paragraph (2),  
8 the President may extend the effective period of any  
9 import relief provided under this subtitle for a pe-  
10 riod of not more than 2 years, if the President de-  
11 termines that—

12 (A) the import relief continues to be nec-  
13 essary to remedy or prevent serious damage  
14 and to facilitate adjustment by the domestic in-  
15 dustry to import competition; and

16 (B) there is evidence that the industry is  
17 making a positive adjustment to import com-  
18 petition.

19 (2) LIMITATION.—Any relief provided under  
20 this subtitle, including any extensions thereof, may  
21 not, in the aggregate, be in effect for more than 4  
22 years.

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

24 The President may not provide import relief under  
25 this subtitle with respect to any article if—

1 (1) import relief previously has been provided  
2 under this subtitle with respect to that article; or

3 (2) the article is subject to import relief  
4 under—

5 (A) subtitle A; or

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

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

9 When import relief under this subtitle is terminated  
10 with respect to an article, the rate of duty on that article  
11 shall be the rate that would have been in effect, but for  
12 the provision of such relief, on the date the relief termi-  
13 nates.

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

15 No import relief may be provided under this subtitle  
16 with respect to any article after the date that is 10 years  
17 after the date on which duties on the article are eliminated  
18 pursuant to the Agreement.

19 **SEC. 327. COMPENSATION AUTHORITY.**

20 For purposes of section 123 of the Trade Act of 1974  
21 (19 U.S.C. 2133), any import relief provided by the Presi-  
22 dent under this subtitle shall be treated as action taken  
23 under chapter 1 of title II of such Act.

1 **SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.**

2       The President may not release information which is  
3 submitted in a proceeding under this subtitle and which  
4 the President considers to be confidential business infor-  
5 mation unless the party submitting the confidential busi-  
6 ness information had notice, at the time of submission,  
7 that such information would be released, or such party  
8 subsequently consents to the release of the information.  
9 To the extent a party submits confidential business infor-  
10 mation to the President in a proceeding under this sub-  
11 title, the party also shall submit a nonconfidential version  
12 of the information, in which the confidential business in-  
13 formation is summarized or, if necessary, deleted.

14 **Subtitle C—Cases Under Title II of**  
15 **the Trade Act of 1974**

16 **SEC. 331. FINDINGS AND ACTION ON GOODS FROM AUS-**  
17 **TRALIA.**

18       (a) EFFECT OF IMPORTS.—If, in any investigation  
19 initiated under chapter 1 of title II of the Trade Act of  
20 1974 (19 U.S.C. 2251 et seq.), the Commission makes an  
21 affirmative determination (or a determination which the  
22 President may treat as an affirmative determination under  
23 such chapter by reason of section 330(d) of the Tariff Act  
24 of 1930), the Commission shall also find (and report to  
25 the President at the time such injury determination is sub-  
26 mitted to the President) whether imports of the article

1 from Australia are a substantial cause of serious injury  
2 or threat thereof.

3 (b) PRESIDENTIAL DETERMINATION REGARDING  
4 AUSTRALIAN IMPORTS.—In determining the nature and  
5 extent of action to be taken under chapter 1 of title II  
6 of the Trade Act of 1974, the President shall determine  
7 whether imports from Australia are a substantial cause  
8 of the serious injury or threat thereof found by the Com-  
9 mission and, if such determination is in the negative, may  
10 exclude from such action imports from Australia.

## 11 **TITLE IV—PROCUREMENT**

### 12 **SEC. 401. ELIGIBLE PRODUCTS.**

13 Section 308(4)(A) of the Trade Agreements Act of  
14 1979 (19 U.S.C. 2518(4)(A)) is amended—

15 (1) by striking “or” at the end of clause (i);

16 (2) by striking the period at the end of clause  
17 (ii) and inserting “; or”; and

18 (3) by adding at the end the following new  
19 clause:

20 “(iii) a party to a free trade agree-  
21 ment that entered into force with respect  
22 to the United States after December 31,  
23 2003, and before January 2, 2005, a prod-  
24 uct or service of that country or instru-  
25 mentality which is covered under the free

1 trade agreement for procurement by the  
2 United States.”.