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NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT

NOVEMBER 18 (legislative day, NOVEMBER 2), 1993.—Ordered to be printed

Mr. MOYNIHAN, from the Committee on Finance and on behalf of MR. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry; MR. HOLLINGS, from the Committee on Commerce, Science, and Transportation; MR. GLENN, from the Committee on Governmental Affairs; MR. BIDEN, from the Committee on the Judiciary; and MR. PELL from the Committee on Foreign Relations filed the following

JOINT REPORT

[To accompany S. 1627]

The Committees on Finance, Agriculture, Nutrition, and Forestry, Commerce, Science, and Transportation, Governmental Affairs, the Judiciary, and Foreign Relations, to which was jointly referred the bill (S. 1627) to implement the North American Free Trade Agreement, having considered the same, report thereon.

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I. REPORTS AND OTHER MATERIALS OF THE COMMITTEES

PRELIMINARY STATEMENT

This joint report compiles the reports and other materials of the several Committees to which S. 1627, the bill to approve and implement the North American Free Trade Agreement (NAFTA), was jointly referred.

PART I. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the bill to approve and implement the NAFTA, having considered the same, reports favorably thereon and recommends that the bill do pass.

SUMMARY OF CONGRESSIONAL CONSIDERATION OF THE NAFTA

The various steps involved in Congressional consideration of the NAFTA, pursuant to procedures established in the Omnibus Trade and Competitiveness Act of 1988 and the Trade Act of 1974, are summarized below.

A. "Fast Track" Authority In General

The requirements for Congressional consideration of the NAFTA under expedited procedures (known as "fast track") are set forth in sections 1102 and 1103 of the Omnibus Trade and Competitiveness Act of 1988 and section 151 of the Trade Act of 1974.

Section 1102 of the Omnibus Trade and Competitiveness Act of 1988 authorized the President, prior to June 1, 1993, to enter into trade agreements with foreign countries providing for the elimination or reduction of tariffs and non-tariff barriers. (The Omnibus Trade and Competitiveness Act of 1988 provided fast track procedures through June 1, 1991, with the possibility that the fast track implementation process could be extended to trade agreements entered into prior to June 1, 1993 if the President so requested and neither House of Congress disapproved of such extension before June 1, 1991.)

On March 1, 1991, President Bush notified the Congress that he was requesting an extension of fast track procedures until June 1, 1993 in order to complete the Uruguay Round of Multilateral Trade Negotiations and to initiate and complete the NAFTA negotiations with Mexico and Canada. In mid-March, the Chairmen of the Senate Committee on Finance and the House Committee on Ways and Means, and the House Majority Leader, wrote to President Bush conveying a number of concerns about free trade with Mexico, particularly with respect to environmental and labor issues (addressing both concerns about lax Mexican enforcement and the need for an adequate U.S. program to assist workers adversely affected by

an agreement). On May 1, 1991, the President responded to those letters with a set of "action plans" intended to address the environmental and labor concerns, as well as a statement of the Administration's views on the economic impact of the proposed agreement. On May 23, 1991, the House of Representatives, by a vote of 231-to-192, failed to disapprove the extension requested by President Bush. On May 24, 1991, the Senate, by a vote of 59-to-36, also failed to disapprove the extension request.

B. Notification Prior to Negotiations

Under section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988, regarding bilateral trade agreements, the President must notify the Committees on Finance and Ways and Means concerning trade negotiations at least 60 days (including only days in which the particular House of Congress is in session) before he notifies the Congress of his intention to enter into any such trade agreement. Either Committee has the authority, under section 1103(c), to disapprove the negotiations during that 60-day period, the effect of which is to eliminate the application of "fast track" procedures to legislation to implement the agreement.

President Bush notified the two Committees on September 25, 1990 of his intention to begin negotiations with Mexico. (This followed a Joint Statement issued on June 11, 1990 by Presidents Bush and Salinas endorsing the objective of a free trade agreement; joint recommendations on August 8, 1990 to the Presidents from Ambassador Hills and Mexican Secretary of Commerce and Industrial Development Serra Puche concerning the initiation of trade negotiations; and a letter dated August 21, 1990 from President Salinas to President Bush formally proposing the initiation of free trade negotiations.) On February 5, 1991, President Bush notified the Committees that Canada (with which the United States had entered into a free trade agreement on January 2, 1988 that was subsequently approved by the Congress), also would participate in the negotiations. Neither Committee exercised its authority under section 1103(c) to disapprove the negotiations.

C. Notification of Intent to Enter Into An Agreement

Under section 1103(a) of the Omnibus Trade and Competitiveness Act of 1988, the President also is required to notify the Congress of his intent to enter into a trade agreement at least 90 calendar days before doing so. At the same time, the advisory committees on trade negotiations, established under the Trade Act of 1974, must submit reports on the agreement. During the period between notification and entering into the agreement, the President is required to consult with the appropriate Committees of jurisdiction concerning subject matter affected by the agreement.

The United States commenced the NAFTA negotiations with the Governments of Mexico and Canada in June 1991. The three Governments announced on August 12, 1992 that they had reached an agreement, and the Administration issued a negotiated summary of the agreement. President Bush notified the Congress on September 18, 1992 of his intent to enter into the NAFTA and submitted the required advisory committee reports, in accordance with the 90-day notice requirement. On October 7, 1992, Presidents Bush and Sali-

nas and Canadian Prime Minister Mulroney met in San Antonio, Texas to discuss plans for implementing the NAFTA, and the three countries' trade ministers initialed the draft legal text of the NAFTA. On December 17, 1992, ninety days after President Bush had provided the required notice, the United States, Mexico, and Canada entered into the NAFTA.

Subsequently, the Clinton Administration negotiated supplemental agreements to the NAFTA on environmental cooperation and labor cooperation, as well as an understanding concerning emergency action under Chapter 8 of the NAFTA (special safeguards for unexpected import surges). The three Governments announced on August 13, 1993 that they had completed those negotiations. The supplemental agreements establish procedures for evaluating the adequacy of the three countries' enforcement of their environmental and labor laws. The agreements were signed on September 14, 1993. The United States and Mexico also subsequently negotiated a bilateral agreement for funding environmental infrastructure projects in the U.S.-Mexican border region.

D. Development of the Implementing Legislation

In practice under the "fast track," Congress and the Administration have worked together to produce the legislation to implement trade agreements. The drafting occurs in informal meetings of the Committees with jurisdiction over laws that must be amended to implement the agreement, and then in House-Senate conference meetings. The objective is to produce one bill to be transmitted by the House and Senate Leadership to the President as the recommended legislation to implement the trade agreement. The drafting is done in close consultation with the Administration in an effort to ensure that the legislation faithfully implements the agreement and that the Administration's subsequent formal submission is, to the greatest degree possible, consistent with the legislation recommended by the Congress.

In meetings in October 1993, the Committee on Finance considered and made recommendations for the implementing bill. Subsequent to those meetings, the Committees on Finance and Ways and Means resolved differences in the recommendations of the two Committees. Other Committees of the Senate and House also considered provisions of the implementing legislation within their respective jurisdictions. On November 2, 1993, the Majority Leader of the Senate and the Speaker of the House transmitted proposed implementing legislation, containing the recommendations of the various Committees of jurisdiction, to the U.S. Trade Representative (USTR).

E. Formal Submission of the Agreement and Legislation

When the President formally submits a trade agreement to the Congress under section 1103, he must include in that submission the final text of the agreement, together with implementing legislation, a Statement of Administrative Action (describing regulatory and other changes that are necessary or appropriate to implement the agreement), and other supporting information. The implementing bill itself must contain provisions formally approving the agreement and the Statement of Administrative Action and proposing

amendments to current law or new authority necessary or appropriate to implement the agreement. The implementing legislation is introduced in both Houses of Congress on the day it is submitted by the President and is referred to Committees with jurisdiction over its provisions.

President Clinton transmitted the final text of the NAFTA, along with implementing legislation, a Statement of Administrative Action, and other supporting information, as required by section 1103(a) of the Omnibus Trade and Competitiveness Act of 1988, to the Congress on November 4, 1993. The legislation was introduced the same day in both the House and the Senate. (The supplemental agreements, along with the agreement with Mexico on border funding and other materials, were transmitted separately to the Congress by the President on November 4.) The implementing bill reported here, which approves the NAFTA and the Statement of Administrative Action and contains a number of additional provisions necessary or appropriate to implement the NAFTA into U.S. law, was referred to six Senate Committees of jurisdiction.

F. Committee and Floor Consideration

Where all of the preceding requirements have been satisfied, implementing revenue bills, such as the NAFTA bill, are subject under the "fast track" procedures of section 151 of the Trade Act of 1974 to the following schedule of Congressional consideration:

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

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

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

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

Thus, Congress has a maximum of 90 days in which to complete action on the bill, although that time period can be shortened. (The 90-day period excludes the days either House is not in session because of an adjournment of more than three days to a day certain or an adjournment *sine die,* and any Saturday or Sunday when either House is not in session.)

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

The Committee on Finance ordered S. 1627 favorably reported on November 18, 1993.

COMMITTEE ON FINANCE ACTIONS

From February 1991 through September 1993, the Committee on Finance held 15 hearings on the NAFTA. Five of the hearings were held in 1993. In those hearings, the Committee heard testimony from Ambassadors Hills and Kantor, other officials of the Executive Branch, representatives of U.S. business, labor, agriculture, and

environmental organizations, and academics concerning the NAFTA and the supplemental agreements on environmental cooperation and labor cooperation. In addition, the Committee held numerous executive sessions with Ambassadors Hills and Kantor, in which the Committee was briefed extensively on specific provisions of the NAFTA and the supplemental agreements on environmental cooperation and labor cooperation.

OVERVIEW OF THE NAFTA

A free trade agreement such as the NAFTA is an arrangement between two or more countries in which each removes tariff and other restrictions on trade between those countries. Article XXIV of the General Agreement on Tariffs and Trade (GATT) permits free trade areas as a deviation from the principle of non-discrimination (most-favored-nation (MFN) treatment) in Article I of the GATT if the agreement meets certain criteria. Most significantly: (1) the free trade area must eliminate duties and other restrictive measures on "substantially all" trade between the parties; and (2) duties and other regulations of commerce maintained by the parties may not be higher or more restrictive to the trade of third countries than they were prior to the agreement.

The NAFTA is the third free trade agreement to which the United States is a party, following the agreements concluded with Israel in 1985 and with Canada in 1988. (The relationship of the NAFTA to the U.S.-Canada Agreement is explained in the description of section 107 of this bill.)

The NAFTA is organized as follows: Part One includes the general objectives, including the NAFTA's relationship to other agreements, and definitions. Part Two, containing the Agreement's major trade liberalizing provisions, covers Chapters 3 through 8. These include provisions on the elimination of tariffs; drawback and other customs programs; rules of origin for determining whether goods have sufficient North American content to qualify for preferential treatment under the NAFTA; trade in automotive goods and in textiles; energy and petrochemicals; agriculture (including sanitary and phytosanitary measures); and emergency actions (bilateral and global safeguards).

Part Three concerns standards-related measures (technical barriers to trade). Part Four covers government procurement rules and procedures. Part Five establishes the rules governing investment, cross-border trade in services, telecommunications, financial services, competition policy, and the temporary entry of business persons. Part Six sets out the rules for protection of intellectual property rights. Part Seven establishes the procedures for review and dispute settlement in antidumping and countervailing duty matters, as well as the general institutional arrangements and dispute settlement procedures. Finally, Part Eight includes both the exceptions from NAFTA coverage and provisions on the entry into force and related matters.

In addition to the 22 chapters of text, the NAFTA includes the tariff schedules of each of the three parties, and annexes setting out the specific rules of origin and the reservations and exceptions taken by each country with respect to the commitments on investment, cross-border trade in services, and financial services.

Not all provisions of the NAFTA are reflected in the implementing legislation. In fact, most of the obligations do not require any U.S. action to effect implementation, because U.S. law and practice already are consistent with the terms of the NAFTA. Other obligations can be implemented through administrative action, as set forth in the Statement of Administrative Action submitted to the Congress with the NAFTA and implementing bill on November 4. Finally, many provisions of the NAFTA, in areas such as energy, investment, and financial services, only necessitate changes in the laws and regulations of Mexico.

GENERAL DESCRIPTION OF THE BILL

Section 1: Short Title and Table of Contents

Section 1 entitles the Act the "North American Free Trade Agreement Implementation Act" and lists the Table of Contents.

Section 2: Definitions

Section 2 defines key terms used throughout the Act.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

Section 101: Approval and Entry Into Force

Approval.—Section 101(a) provides that, pursuant to the requirements of section 1103 of the Omnibus Trade and Competitiveness Act of 1988 and section 151 of the Trade Act of 1974, the Congress approves the NAFTA entered into on December 17, 1992 with the Governments of Canada and Mexico and submitted to the Congress on November 4, 1993, and the Statement of Administrative Action proposed by the Executive Branch to implement the NAFTA and submitted to the Congress on November 4, 1993.

Conditions for entry into force.—Section 101(b) establishes conditions for the NAFTA's entry into force, implementing Article 2203 of the NAFTA. It authorizes the President to exchange notes with the Government of Canada or Mexico providing for the NAFTA's entry into force, on or after January 1, 1994, with respect to such country, but establishing certain conditions for such entry into force.

First, the President shall determine that such country has implemented the statutory changes necessary to comply with its NAFTA obligations and has made provision to implement the Uniform Regulations on rules of origin under article 511 of the NAFTA. The President shall transmit a report to the Congress setting forth this determination, as well as a description of the measures taken by Mexico to bring its antidumping and countervailing duty laws into conformity with Annex 1904.15 of the NAFTA and to ensure effective implementation of the binational panel review process under Chapter 19 of the NAFTA.

Second, the Government of such country shall exchange notes with the United States providing for the entry into force, for that country and the United States, of the environmental and labor supplemental agreements (the North American Agreement on Environ-

mental Cooperation and the North American Agreement on Labor Cooperation).

The purpose of this provision, coupled with commitments made in the Statement of Administrative Action, is to make clear that the President will exchange notes permitting the NAFTA's entry into force with respect to Canada or Mexico when such country has satisfied both of the above requirements, and the President has reported to Congress with respect to the first of these.

Section 102: Relationship of the NAFTA to the United States and State Law

Relationship to U.S. law in general.—Section 102(a)(1) provides that no provision of the NAFTA, nor its application, which is inconsistent with any U.S. law shall have effect. Section 102(a)(2) provides that, unless specifically provided for in this implementing bill, nothing in this bill shall be construed to amend or modify any U.S. law, including any law concerning the protection of human, animal, or plant life or health, the environment, or motor carrier or worker safety.

These provisions conform with and reflect the Committee's understanding that any necessary changes in Federal laws must be enacted specifically by the Congress; the NAFTA is not self-executing and therefore has no independent effect under U.S. law. The Committee is not aware that any action, aside from what is included in this bill and the Statement of Administrative Action, is necessary to implement U.S. obligations under the NAFTA. If in the future a NAFTA dispute settlement panel were to determine that a particular U.S. law was inconsistent with the NAFTA, the Congress would retain the full authority to determine whether or not to amend or modify that law.

Section 102(a)(2) provides further that nothing in this bill shall be construed to limit any authority conferred under section 301 of the Trade Act of 1974. The Committee notes that the Statement of Administrative Action submitted to the Congress on November 4, 1993 expressly states that the NAFTA does not amend or limit remedies available under section 301, and that the USTR will maintain its full authority to take retaliatory actions and other measures under section 301 should another NAFTA country engage in practices that are subject to that provision. The Committee strongly believes that the NAFTA should not, and does not, in any manner restrict the remedies available to the U.S. Government under section 301.

Relationship to State law.—Section 102(b) sets out the relationship of the NAFTA to State law and defines the process for carrying out U.S. obligations under the NAFTA, as applied to the States, through extensive consultations with State officials.

Section 102(b)(1) expands significantly on the U.S.-Canada Free Trade Agreement Implementation Act of 1988 (the CFTA Act) in establishing a detailed process for Federal-State consultation. This process is elaborated upon in the Statement of Administrative Action.

The President shall consult with the States through the Intergovernmental Policy Advisory Committee on Trade (IGPAC) established under section 306(c)(2)(A) of the Trade and Tariff Act of

1984. In addition, the USTR shall establish an expanded consultative process to address particular issues that arise under the NAFTA. This process shall include (1) assisting the States in identifying measures that may not conform with the NAFTA but may be maintained because they were in effect prior to the NAFTA's entry into force (i.e., those that are "grandfathered"); (2) informing the States concerning any matter arising under the NAFTA that directly relates to, or may have a direct impact on, them; (3) providing the States with the opportunity to submit information and advice with regard to such matters; (4) taking into account such information and advice in formulating U.S. positions; and (5) involving the States, to the greatest extent practicable, at each stage of the development of U.S. positions with respect to such matters (whether they are before a committee, subcommittee, or working group established by the NAFTA or are to be decided by a dispute settlement panel).

Section 102(b)(1) also clarifies that this Federal-State consultative process does not create an "advisory committee" under the Federal Advisory Committee Act.

Section 102(b)(2) establishes that no State law, nor its application, may be declared invalid on the ground of being inconsistent with the NAFTA, except in an action brought for such purpose by the United States. This provision makes clear that the NAFTA does not automatically preempt State laws that do not conform to its provisions—even if a NAFTA dispute settlement panel were to determine that a particular State measure was inconsistent with the NAFTA. In view of the extensive consultation procedures provided under section 102(b)(1), the Committee anticipates that only in rare instances will State laws be found to be inconsistent with the NAFTA. Should that occur, this bill envisions that the Federal Government will do everything possible to encourage voluntary compliance by the States with the NAFTA. It is the Committee's expectation that court actions to compel State adherence would be brought by the United States only in the most limited circumstances and only as a last resort.

Definition of "State law."—Section 102(b)(3) defines "State law;" the specific reference to any such law regulating or taxing the business of insurance is intended to address section 2 of the McCarran-Ferguson Act, which provides that no Federal statute is to be construed to supersede any State law regulating or taxing the business of insurance unless the Federal statute specifically relates to that business.

No private rights of action.—Section 102(c) provides that no person other than the United States shall be able to challenge any action or inaction by either the Federal or a State government (or its subdivision) on the ground that this is inconsistent either with the NAFTA or the environmental or labor supplemental agreement. This express preclusion of private rights of action based on the NAFTA or the supplemental agreements further clarifies the limited circumstances and defined procedures for challenges to U.S. or State laws based on their alleged inconsistency with the NAFTA.

Section 103: Consultation and Layover Requirements for, and Effective Date of, Proclaimed Actions

Certain actions that must be undertaken in order to implement the NAFTA pursuant to this bill are authorized to be proclaimed by the President rather than enacted directly. This bill authorizes the President to proclaim certain actions immediately. The President is further authorized, in certain circumstances, to take future actions by proclamation. In those circumstances, it is essential to ensure adequate consultation with the Congress and the private sector before the action is taken. This is accomplished by requiring both consultation and a layover period prior to Presidential proclamation.

Section 103(a) provides that, if a provision of the implementing bill subjects implementation of an action by Presidential proclamation to consultation and layover requirements, such action may be proclaimed only if three procedural requirements are met:

(1) the President has obtained advice regarding the proposed action from appropriate private sector advisory committees and from the International Trade Commission (ITC);

(2) the President has submitted a report to the Committees on Finance and Ways and Means setting forth the proposed action and reasons therefor and the advice obtained; and

(3) at least 60 calendar days have expired since submission of the report, and the President has consulted the Committees during that period.

This three-step process applies to the following provisions: (1) tariff modifications, including any acceleration of tariff staging agreed to by the Parties; (2) modifications to specific rules of origin in Appendix 6.A of Annex 300–B and Annex 401, the automotive "tracing" requirements in Annexes 403.1 and 403.2, and the regional value-content provision in Annex 403.3 of the NAFTA; and (3) modifications in provisions of the bill that enact Article 415 (rule of origin definitions) agreed to by the Parties during the first year after enactment of the implementing bill.

Initial proclamations authorized in this bill (tariff modifications to implement schedules of duty reductions, basic and specific rules of origin, various customs provisions) that are not subject to these consultation and layover requirements may not take effect earlier than 15 days after the proclamation is published in the Federal Register.

The Committee notes further that this bill does not provide expedited legislative consideration for any changes in statutes needed for future amendments to the NAFTA. It is expected that normal legislative procedures would apply to any such legislation.

Section 104: Implementing Actions in Anticipation of Entry Into Force and Initial Regulations

Section 104(a) provides that the President (subject to consultation and layover requirements and any other applicable restriction or limitation provided in the implementing bill) may proclaim such actions, and U.S. Government officers may issue such regulations, as may be necessary to ensure that any provision of the legislation that takes effect on the date the NAFTA enters into force is appropriately implemented on, but not prior to, that date.

Section 104(b) provides that initial regulations that are necessary or appropriate to carry out the Statement of Administrative Action shall, to the maximum extent feasible, be issued within one year after the NAFTA enters into force. However, interim or initial regulations on rules of origin (reflecting the Uniform Regulations required by article 511 of the NAFTA) shall be issued no later than the date of entry into force of the NAFTA. This is intended to respond to the Committee's concerns with respect to the lengthy delay in issuing U.S. regulations to implement the rules of origin set forth in the U.S.-Canada Free Trade Agreement (CFTA) subsequent to the CFTA's entry into force on January 1, 1989. For any implementing action that takes effect after the entry into force, initial regulations shall, to the maximum extent feasible, be issued within one year after the relevant effective date.

Section 105: United States Section of the NAFTA Secretariat

Article 2002 of the NAFTA provides for the establishment of a Secretariat, comprised of national sections, to assist in the implementation and administration of the NAFTA, particularly with respect to the dispute settlement panels and committees established under Chapter 19 (for disputes involving the antidumping and countervailing duty laws) and Chapter 20 (for other disputes arising under the NAFTA).

Section 105(a) of this bill authorizes the President to establish, within any U.S. Government department or agency, a U.S. Section of the Secretariat established under Chapter 20 of the NAFTA. The U.S. Section shall facilitate the operations of Chapters 19 and 20, including the work of the panels and extra-ordinary challenge committees convened pursuant to those chapters.

Section 105(b) authorizes appropriations, for each fiscal year after fiscal year 1993, to the Department of Commerce (where the U.S. Section will be established) of the lesser of such sums as may be necessary or $2,000,000, for the establishment and operations of the U.S. Section and for payment of the U.S. share of expenses of binational panels and extraordinary challenge committees convened pursuant to Chapter 19 and dispute settlement proceedings under Chapter 20. The U.S. Section may retain and use funds provided by the Canadian and Mexican Sections for payment of their share of such expenses.

Section 106: Appointments to Chapter 20 Panel Proceedings

Section 106(a) requires USTR to consult with the Committees on Finance and Ways and Means regarding the selection and appointment of candidates to the roster of panelists eligible to serve on dispute settlement panels in proceedings under Chapter 20.

Section 106(b) provides that the United States shall, to the maximum extent practicable, encourage the selection of environmental experts as panelists in proceedings under Chapter 20 involving challenges to U.S. or State environmental laws.

Section 107: Termination or Suspension of the CFTA

Section 107 amends Section 501(c) of the CFTA Act to address the relationship of the CFTA to the NAFTA. It is structured to implement the understanding reached through an exchange of letters

between the Governments of the United States and Canada on January 19, 1993, stating that the United States and Canada will arrange for the suspension of the CFTA upon the NAFTA's entry into force for the two countries, and that the suspension will remain in effect for such time as the two countries remain parties to the NAFTA.

Section 107 provides that, on the date that the United States and Canada agree to suspend the CFTA's operation by reason of the NAFTA's entry into force between them, the following provisions of the CFTA Act are suspended: sections 204(a) and (b) (concerning drawback), section 205(a) (certificates of origin enforcement), section 302 (import relief measures), section 304(f) (biennial reports), section 404 (amendments to antidumping and countervailing duty laws), section 409 (subsidies), and section 410(b) (transition provisions). These shall remain suspended until such time as the suspension itself is terminated. It is the Committee's understanding that, in cases where the CFTA Act carries out U.S. obligations under the CFTA that will continue in effect under the NAFTA, those provisions of the CFTA Act either remain in place or are amended in this implementing bill.

Section 107 provides further that an agreement by the United States and Canada to suspend the CFTA shall not be deemed to cause the CFTA to cease to be in force. If, however, the CFTA does cease to be in force, all of the CFTA Act's provisions, with the exception of sections 410(b) and 501(c), shall cease to have effect.

Section 108: Congressional Intent Regarding Future Accessions

Section 108(a) provides that Congressional approval of the NAFTA may not be construed as conferring approval of its entry into force with respect to countries other than Canada and Mexico. This states the Committee's understanding that the Congress would review, and either approve or reject, proposals for accession by any other country to the NAFTA. Such a procedure is consistent with the language of Article 2204 of the NAFTA that any future accession shall be subject to approval in accordance with the applicable legal procedures of each NAFTA country.

Section 108(b) establishes a process for consideration of future free trade negotiations, based on findings by the Congress concerning the importance of trade agreements that provide greater market access for U.S. exports of goods and services and opportunities for export-related investment by U.S. persons. By May 1, 1994 and again by May 1, 1997, USTR shall submit to the President and the Committees on Finance and Ways and Means a report listing those countries that either (1) currently provide fair and equitable market access to U.S. exports, or (2) have made significant progress in opening their markets to U.S. exports, and the further opening of whose markets has the greatest potential to increase U.S. exports. On the basis of these reports, the President, by July 1, 1994 and July 1, 1997, is required to report to the Committees on Finance and Ways and Means regarding the countries with which the United States should seek to negotiate free trade agreements, and the objectives for such negotiations.

Section 108(b) also sets out several general U.S. objectives with respect to any such negotiations, including obtaining preferential

treatment for U.S. goods, national treatment (and, where appropriate, equivalent competitive opportunity) for U.S. services and foreign direct investment by U.S. persons, the elimination of various foreign trade barriers to U.S. goods and services, adequate and effective protection of intellectual property rights for U.S. persons, the elimination of all export taxes (in particular, differential export taxes that disadvantage U.S. producers), and effective dispute settlement mechanisms to facilitate compliance with all of the listed objectives.

Section 109: Effective Dates; Effect of Termination of NAFTA Status

Section 109 provides that, with the exception of section 107, Title I takes effect on the date of enactment of the implementing bill. Section 107 takes effect on the date that the NAFTA enters into force between the United States and Canada. Sections 101 through 106 shall cease to have effect with respect to a country during any period in which that country ceases to be a party to the NAFTA.

TITLE II—CUSTOMS PROVISIONS

Section 201: Tariff Modifications

Article 302 of the NAFTA is the cornerstone of the agreement between the three countries. It calls for the progressive elimination of tariffs according to the staging categories set forth in Annex 302.2 and in each Party's schedule to Annex 302.2. There are four basic staging categories: (1) immediate elimination of tariffs (category A); (2) five-year phase-out in equal, annual cuts of 20 percent (category B); (3) 10-year phase-out in equal annual cuts of 10 percent (category C); and (4) in the case of the most import-sensitive products, 15-year phase-out in equal, annual cuts of 6.67 percent per year (category C+). Goods that currently receive duty-free treatment will continue to receive duty-free treatment (category D).

Section 201 implements Article 302. Subsection (a) authorizes the President to proclaim such modifications or continuation of any duty, continuation of duty-free or excise treatment, or such additional duties as he determines to be necessary or appropriate to implement the NAFTA articles and annexes providing for the phase-out of tariffs.

Subsection (a) further requires the President to terminate Mexico as a beneficiary under the Generalized System of Preferences (GSP) program on the date the NAFTA enters into force between the United States and Mexico. The Committee believes that termination of Mexico's status as a GSP beneficiary is necessary to achieve the goals of the NAFTA, and the maximum possible benefits for the United States. The rules of origin under GSP are generally less stringent than the NAFTA rules of origin. The Committee believes that permitting Mexico to continue to receive GSP benefits would, therefore, undermine the NAFTA.

Section 201(b) authorizes the President, subject to consultation and layover requirements, to proclaim tariff modifications, including the accelerated phase-out of tariffs, that the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada or Mexico. Subsection (b)(2) provides, however, that for

articles with a tariff phaseout period of more than 10 years, the President may not consider a new request to accelerate the staging of duty reductions if a request for acceleration has been denied with respect to that article in the preceding three years. The Committee believes that this restriction is necessary for the import-sensitive products subject to these gradual phaseout periods in order to prevent petitioners from filing annual requests for acceleration, even in the absence of changed circumstances, that would require the domestic industry to devote often-limited resources to oppose the acceleration request. The Committee believes that this three-year rule will still afford parties interested in seeking acceleration an ample opportunity to do so, without unduly burdening the domestic industry.

With respect to all requests for accelerated tariff reductions, it is the Committee's intent that USTR continue to use the same administrative procedures in considering such requests under the NAFTA as have been used under the CFTA, with respect to denying such requests when they are opposed by the domestic industry. It is the Committee's intention to use the consultation and layover period to screen for a second time any potentially controversial acceleration proposals.

At the same time, the Committee recognizes that the provisions for accelerated tariff reduction can have a beneficial effect. To that end, the Committee urges the Administration, beginning as soon as possible after the NAFTA's entry into force, to press Mexico for accelerated removal of tariffs on a number of U.S. products, particularly those for which reciprocal tariff concessions were not obtained from Mexico during the course of the NAFTA negotiations. In particular, the Committee urges USTR to request immediate consultations with Mexico to seek accelerated reductions of the tariffs on household appliances, flat glass, bedding components, and wine and brandy. This is consistent with the November 3, 1993 exchange of letters between USTR Kantor and Mexican Secretary of Commerce and Industrial Development Serra Puche, which provide that the two countries will begin the first round of tariff acceleration negotiations in January 1994, immediately after the NAFTA's entry into force, with the intention of completing them in 120 days or less. The Committee expects to consult closely with USTR concerning the outcome of those acceleration negotiations, and requests that USTR issue a report to the Committee within 30-45 days of their conclusion.

Section 201(c) authorizes the President to substitute for the base rate of certain textile and apparel articles covered by Annex 300–B an *ad valorem* rate equivalent to the base rate. The flexibility that this subsection provides is intended to implement an agreement between the United States and Mexico that the Committee understands has the full support of U.S. industry. (The base rates for customs duties, which are, in general, the rates of duty in effect on July 1, 1991, are set forth in each Party's Schedule to Annex 302.2.)

Section 202: Rules of Origin

Section 202 enacts into law the general rules of origin set forth in Chapter 4 of the NAFTA, and authorizes the President to pro-

claim the product-specific rules of origin set forth in Annex 401. These rules are essential to ensure that the benefits of the NAFTA accrue primarily to North American producers, and the Committee intends that the Customs Service vigorously enforce them.

Subsections (a) through (l) and (p) enact NAFTA Articles 401 through 413, and NAFTA Article 415, into law. Subsection (a) sets forth the requirements that goods must meet to be considered "originating" goods and therefore eligible for preferential tariff treatment under the NAFTA. In general, a good may be considered an originating good if it falls into one of the following categories: (1) the good is wholly obtained or produced in the territory of one or more of the NAFTA Parties; (2) each of the non-originating materials used in the production of the good undergoes a change in tariff classification as a result of production that occurs entirely within one or more of the Parties or the good otherwise satisfies the origin requirements; (3) the good is produced entirely in one or more of the Parties exclusively from NAFTA-origin materials; or (4) in certain circumstances, the good is produced entirely in one or more of the NAFTA Parties but one or more of the non-originating materials that are provided for as parts under the Harmonized Tariff Schedule (HTS) and used in the production of the good does not undergo a change in tariff classification, but only if the regional value content of the good (labor performed and parts produced within NAFTA countries) meets certain thresholds (at least 60 percent of the value of the goods or 50 percent of their net cost).

Subsection (a) further provides, however, that NAFTA origin (and therefore NAFTA tariff benefits) may *not* be conferred on goods produced in foreign trade zones (FTZs) or subzones even if non-originating materials undergo an applicable change in tariff classification. This provision ensures that current law will continue to apply to goods produced in FTZs or subzones, *i.e.,* that full duties are owed on the value of foreign materials or components used in goods produced in FTZs or subzones when such goods are entered for consumption in the United States.

Subsection (b) enacts into law Article 402 of the NAFTA, which sets forth the formulas for calculating regional value content on the basis of the two methodologies approved by the NAFTA—the transaction value method and the net cost method. Using the transaction value method, as provided in subsection (b)(2), the regional value content is calculated by taking the difference between the transaction value of the good (adjusted to an f.o.b. (free on board) basis) and the value of non-originating materials used in the production of the good and dividing by the transaction value of the good. Under the net cost method, as described in subsection (b)(3), the regional value content is calculated by dividing the difference between the net cost of the good and the value of non-originating materials used in the production of the good by the net cost of the good.

Section 202(b)(4), as mandated by paragraph 4 of Article 402, provides that, except for certain motor vehicles and parts, the value of any non-originating materials used to produce originating materials subsequently used in the production of a good is excluded from the calculation of the regional value content.

Paragraph 5 of Article 402 requires that the net cost method be used to calculate regional value content in certain circumstances. As set forth in section 202(b)(5) of this bill, the net cost method must be used where there is no transaction value for the good or the transaction value is unacceptable under the Customs Valuation Code; the good is sold by a producer to a related person under specific circumstances; or the goods involved are certain motor vehicles, automotive components, footwear, or word processing machines. The net cost method must also be used if the exporter or producer chooses to accumulate the regional value content of the good or the good is designated as an intermediate material (as provided in paragraph 10 of Article 402) and is subject to a regional value content requirement.

Section 202(b)(6) allows an exporter or producer who has calculated regional value content based on transaction value to recalculate regional content using the net cost method if the exporter or producer is notified, during the course of a verification, that the transaction value or the value of any material used in the production of the good must be adjusted or is unacceptable. This provision implements paragraph 6 of Article 402. Subsection (b)(7), as required by paragraph 7 of Article 402, is intended to clarify that this provision is not to be construed to prevent any review or appeal available under NAFTA Article 510 with respect to an adjustment to, or a rejection of, the transaction value of the good or the value of any material used in the production of a good.

As provided in paragraph 8 of Article 402, section 202(b)(8) sets forth three methods for allocating costs when using the net cost method to calculate regional value content. This subsection allows producers to allocate costs by: (1) calculating total costs, subtracting non-allowable costs, and reasonably allocating the resulting net cost to the goods; (2) calculating total costs, reasonably allocating the total cost to the good and then subtracting non-allowable costs; or (3) reasonably allocating each allowable cost that forms part of the total cost so that the aggregate of the costs does not include any non-allowable costs.

Subsection (b)(9), implementing paragraph 9 of Article 402, establishes a hierarchy of methods for determining the value of materials. Value will generally be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code. If the transaction value is unacceptable under that provision, the value should be determined in accordance with Articles 2 through 7 of the Code. Otherwise, value is to include certain specified costs set forth in the NAFTA and in subsection (b)(9).

With certain exceptions related to automotive goods, subsection (b)(10) allows a producer to designate, subject to certain restrictions, a self-produced material used in the production of a good as an intermediate material for purposes of calculating regional value content. Once it is determined that the intermediate material meets the applicable rule of origin, all costs in the production of the intermediate material are treated as originating costs. Sections 202(b)(11) and (12) provide rules for calculating the value of an intermediate material and an indirect material, respectively.

Section 202(c) implements Article 403, which sets forth special rules of origin for motor vehicles. The Committee understands that

these rules were developed by the NAFTA negotiators in response to problems that have arisen in applying the rules of origin under the CFTA to motor vehicles. Subsection (c)(1) provides that, for passenger vehicles and light trucks and their automotive parts, the value of non-originating materials must be traced back through the production process when calculating regional value content. The tracing requirements under this subsection provide that the value of non-originating materials used in the production of the good is the sum of the values of all non-originating materials at the time such materials are received by the first person in the territory of a NAFTA country who takes title to them, that are imported from outside the NAFTA countries under the HTS provisions listed in Annex 403.1 and that are used in the production of the good or in any materials used in the production of the good.

Subsection (c)(2) sets forth less extensive tracing requirements for other vehicles and their parts. For these goods, the value of non-originating materials used by the producer is be the sum of: (1) for each material listed in Annex 403.2, either the value of the material that is non-originating or the value of non-originating materials used in the production of such material, and (2) the value of any other non-originating materials used by the producer.

Section 202(c)(3) permits an auto producer to average its calculation of the regional value content of a motor vehicle over its fiscal year using any of the following categories: (1) over the same model line of motor vehicles in a single class produced in the same plant in a NAFTA country; (2) over the same class of motor vehicles produced in the same plant in a NAFTA country; or (3) over the same model line produced in the territory of a NAFTA country. Averaging may be done on the basis of either all motor vehicles in the category or only those vehicles exported to NAFTA countries. In addition, if certain conditions are met, vehicles produced by CAMI Automotive, Inc., in Canada may be averaged with vehicles produced by General Motors of Canada.

Subsection (c)(4) permits a producer to average the regional value content calculation of the automotive components listed in Annexes 403.1 or 403.2 over the fiscal year of the motor vehicle producer to whom the good is sold; over any quarter or month; or, if the good is sold as an aftermarket part, over its fiscal year. Producers may also calculate the average separately for goods sold to one or more motor vehicle producers or goods exported to a NAFTA country.

NAFTA Article 403 provides a stringent regional value content requirement for motor vehicles; the requirement is enacted into law in subsection (c)(5) of this bill. For passenger motor vehicles, light trucks, and their engines and transmissions, the regional value content is increased in stages from 50 percent for the first four years of NAFTA to 56 percent for the second four years to 62.5 percent thereafter. Other motor vehicles and other automotive parts are subject to a 50 percent regional content requirement for the first four years, 55 percent for the second four years, and 60 percent thereafter. Under section 202(c)(6), the required regional value content is temporarily reduced to 50 percent for a five-year period for investors establishing new plants to produce vehicles not pre-

viously made by that producer in the region and for a two-year period following refit of an existing plant to produce a new vehicle.

As a transitional measure, subsection (c)(7) provides that, for certain motor vehicles exported from Canada on or after January 1, 1989, and before date of entry into force of the NAFTA, the importer may elect to use the NAFTA rules of origin in lieu of the CFTA rules of origin and may elect to use either of the methods provided in the NAFTA for tracing the value of non-originating materials in automotive products for purposes of determining eligibility for preferential treatment under the CFTA. Election must be made within 180 days after NAFTA's entry into force and may be made only if the liquidation of an entry has not become final. This subsection implements a U.S. commitment contained in a December 15, 1992 letter from former Deputy USTR Katz to former Canadian Deputy Minister of International Trade Campbell.

Section 202(d), which implements NAFTA Article 404, clarifies that where more than one producer is involved in the production of a good, either in one NAFTA country or more than one NAFTA country, the producers may accumulate their regional processing in determining whether a good meets a required tariff classification change or regional value content requirement.

Unlike the CFTA, NAFTA Article 405 provides a *de minimis* rule for origin determinations. Subsection (e) provides that, with certain exceptions, goods may qualify as originating goods even if a small portion of the material (generally less than seven percent of the value or total cost of the good) fails to undergo an otherwise required change in tariff classification. For goods subject to a regional value content requirement, the calculation of that content is waived if the value of all non-originating materials is less than seven percent of the value or total cost of the good. The *de minimis* rule does not apply to certain agricultural products, home appliances, printed circuit assemblies, and other specified articles.

Subsection (f) implements Article 406. Under this provision, if originating and non-originating fungible materials are used in the production of a good or are commingled and exported in the same form, the origin determination may be made on the basis of any of the inventory management methods set out in the Uniform Regulations implementing the NAFTA rules of origin. (NAFTA Article 511 requires the Parties to establish and implement by January 1, 1994 Uniform Regulations regarding the interpretation and implementation of NAFTA Chapter 4 (Rules of Origin) and Chapter 5 (Customs Procedures)).

Section 202(g), implementing NAFTA Article 407, provides that accessories, spare parts or tools delivered with an originating good shall themselves be considered to be originating goods and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification. These provisions apply only if the accessories, spare parts or tools are not invoiced separately from the good and the quantities and values are customary for the good. For goods subject to a regional value content requirement, the value of any accessories, spare parts or tools must be taken into account in calculating the regional value content.

Subsection (h), which implements Article 408, clarifies that indirect materials (generally, goods used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance or operation of buildings or equipment) are originating materials without regard to where they are produced.

Section 202(i) provides that, in determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification, packaging materials and containers associated with the retail sale are to be disregarded if they are classified with the good. However, if the good is subject to a regional value content rule, the value of the retail packaging materials is to be taken into account in calculating the regional value content. This subsection implements Article 409.

With respect to packing materials and containers in which a good is packed for shipment, subsection (j) provides that these are to be disregarded in determining whether the materials used in production meet the applicable change in tariff classification requirement or the regional value content requirement.

Subsection (k) prohibits the extension of NAFTA tariff preferences to goods shipped outside the territories of the NAFTA Parties for further processing. This subsection implements Article 411 of the NAFTA, which denies originating good status to such transshipped goods.

Subsection (l) implements Article 412 by providing that goods shall not be considered to be originating goods merely because they have been diluted with water or another substance or by reason of a production or pricing practice the object of which is to circumvent the NAFTA rules of origin.

Subsection (m) implements Article 413, which provides general rules for interpreting and applying the NAFTA rules of origin. These rules establish the Harmonized System as the basis for tariff classification under the NAFTA. Subsection (m) also provides rules for determining whether a heading or subheading provides for and specifically describes a good and its parts, as well as rules for applying the Customs Valuation Code.

Section 202(n) implements NAFTA Article 308 and Annex 308.1. These provisions phase in, over 10 years, a common external tariff for certain automatic data processing goods and their parts. As provided in paragraph 2 of Annex 308.1, when the MFN rate of duty applicable to these goods reaches the agreed level, these products will be deemed to be originating goods notwithstanding the rules of origin set forth in Chapter 4. Subsection (n) provides that, by operation of law, when the NAFTA Parties apply the agreed MFN rate to these products, they will be deemed to originate in a NAFTA country.

Under paragraphs 10 and 11 of Annex 703.2, the United States and Mexico may treat certain agricultural products (peanuts, peanut products, and sugar-containing products) as non-originating goods even if they meet the rules of origin set forth in Chapter 4. Section 202(o) implements these paragraphs. Under these provisions, the rules of origin applicable to these products will be stricter than the otherwise applicable rules. In order to qualify for NAFTA benefits, peanuts exported to the United States from Mex-

ico must be harvested in Mexico, peanut butter and other peanut products must be made from peanuts harvested in Mexico, and the sugar used in sugar-containing products must have been harvested in Mexico.

Subsection (p) enacts as statutory provisions all of the definitions set forth in Article 415 of the NAFTA.

Subsection (q) provides the authority for the President to proclaim the specific rules of origin set forth in Annexes 401, 403.1, 403.2, and 403.3, as well as in Appendix 6.A of Annex 300-B. This subsection also authorizes the President, subject to consultation and layover requirements, to proclaim changes to the specific rules of origin for all products except textile and apparel products. For textile and apparel products, the President may proclaim, subject to consultation and layover requirements, changes to the rules only under two circumstances: (1) to implement such changes as agreed to by the Parties pursuant to Annex 300-B relating to agreements to modify the rules to address issues of availability of supply; or (2) to make purely technical corrections within one year after date of enactment of this Act. The Committee believes that these restrictions on the President's ability to modify the textile rules of origin are necessary to ensure that any proposals to make significant changes to these rules are scrutinized by the Congress. Finally, subsection (q) also authorizes the President to proclaim, subject to consultation and layover requirements, changes to the definitions set forth in Article 415 of the NAFTA, but only within one year after enactment of this Act.

Section 203: Drawback

Under current law, U.S. duty drawback programs provide for the refund of up to 99 percent of the duties paid on imported goods when such goods, or substituted domestic goods, are exported or incorporated in articles that are subsequently exported. Section 204 of the CFTA Act prohibits duty drawback on goods traded between the United States and Canada as of January 1, 1994, subject to limited exceptions. The NAFTA makes significant changes to the drawback rules that will apply to trade among the NAFTA countries.

NAFTA Article 303 strictly limits duty drawback on trade between the United States and Canada as of January 1, 1996, and on trade between the United States and Mexico as of January 1, 2001, with certain exceptions. For dutiable goods traded between the Parties, drawback will be limited to an amount that is the lesser of (1) the total amount of customs duties paid or owed on the non-NAFTA components initially imported; and (2) the total amount of customs duties paid to another Party on the good subsequently exported (hereafter called "NAFTA drawback formula). FTZs, maquiladoras, and other in-bond operations will be charged duty for non-NAFTA components used in goods that are sold to other NAFTA parties just as if the goods were sold into their domestic markets.

Section 203(a) defines the goods that are subject to the NAFTA drawback rules. In sum, all goods traded among the NAFTA countries are subject to the NAFTA drawback restrictions except for the

goods identified in this subsection. The exceptions track those found in paragraph 6 of Article 303.

Section 203(b) amends the relevant provisions of the Tariff Act of 1930 and the Foreign Trade Zones Act (FTZ Act) to bring these statutes into conformity with the NAFTA drawback provisions. With regard to "manufacturing" drawback, section 203(b) amends section 311 of the Tariff Act of 1930 to provide that articles manufactured in a bonded warehouse from goods that are subject to NAFTA drawback are subject to duty upon withdrawal from the warehouse. Such duties must be paid within 60 days of exportation, except that duties may be waived, or reduced in an amount that does not exceed the amount stipulated in the NAFTA drawback formula. Subsection (b) also amends section 312 of the Tariff Act of 1930 to provide that duties must be paid, within 60 days of exportation to a NAFTA country, on metal-bearing materials that are refined or smelted in a bonded warehouse, except that such duties may be waived or reduced in an amount that does not exceed the amount provided for in the NAFTA drawback formula.

With respect to "substitution" drawback, subsection (b) amends section 313 of the Tariff Act of 1930 to provide generally that, for goods subject to NAFTA drawback, no customs duties may be refunded, waived or reduced in an amount that exceeds that provided for in the NAFTA drawback formula.

This subsection also amends section 562 of the Tariff Act of 1930, regarding "same condition" drawback, to provide that the NAFTA drawback formula applies to goods cleaned, sorted, or packed in bonded warehouses.

Section 203(b) also amends section 3(a) of the FTZ Act to bring that law into compliance with Article 303 of the NAFTA. Duties will be collected within 60 days of exportation to Canada or Mexico to the same extent as if the product were entered for domestic consumption, except that duties may be waived or reduced in an amount that does not exceed the amount provided for under the NAFTA drawback formula.

The amendments made to sections 311, 312, 313, and 562 of the Tariff Act of 1930 and to the FTZ Act apply on and after January 1, 1996 with respect to exports to Canada and on and after January 1, 2001 with respect to exports to Mexico.

Section 203(c) amends section 313(j) of the Tariff Act of 1930 to provide that, effective immediately, drawback may not be paid on exports to a NAFTA country of merchandise that is fungible with and substituted for imported merchandise. This subsection implements paragraph 2(d) of Article 303, which eliminates "same condition substitution" drawback on trade among the NAFTA Parties.

Consistent with paragraph 2(c) of Article 303, section 203(d) prohibits the Secretary of the Treasury from refunding or reducing a fee applied pursuant to section 22 of the Agricultural Adjustment Act for goods subject to NAFTA drawback. This restriction applies to any such goods exported to Canada after December 31, 1995 and any such goods exported to Mexico after December 31, 2000.

Subsection (e) clarifies that nothing in section 203 or the amendments made by section 203 authorizes the refund, waiver or reduction of countervailing or antidumping duties imposed on goods imported into the United States. This subsection implements para-

graph 2(a) of Article 303. Current U.S. law does not, in any event, permit drawback of antidumping or countervailing duties.

The limitations on duty drawback are designed to promote the NAFTA's goal of creating an integrated market for North American products. The changes to the duty drawback regimes of the NAFTA countries will ensure that MFN tariffs will be assessed by all NAFTA countries on non-NAFTA components for final goods manufactured in their territories, whether those goods are ultimately sold in a NAFTA country's domestic market or sold in the markets of the other NAFTA countries. The requirement that duties must be paid on non-NAFTA components will create an incentive to use North American inputs and will help guard against the establishment of export platforms in Mexico by companies seeking to take advantage of NAFTA tariff preferences. At the same time, the NAFTA duty drawback formula eliminates double taxation on non-NAFTA inputs; tariffs will be collected only once for non-NAFTA inputs used in goods traded among the NAFTA Parties. This will help ensure that North American producers whose goods are not eligible for NAFTA tariff preferences (because they do not meet the NAFTA rules of origin) will not be disadvantaged when they compete with non-North American producers in the U.S. market.

Section 204: Customs User Fees

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) authorizes the Customs Service to collect certain user fees, including a merchandise processing fee, through September 30, 1998. NAFTA Article 310 requires the United States to phase out its merchandise processing fee with respect to Canadian originating goods according to the schedule set forth in CFTA Article 403, which requires the United States to eliminate the fee on goods originating in Canada by January 1, 1994. Article 310 also requires the United States and Mexico to eliminate their merchandise processing fees on originating goods by June 30, 1999.

To implement these provisions, section 204 amends the COBRA to provide that, effective January 1, 1994, the merchandise processing fee may not be imposed on Canadian goods that qualify under the rules of origin. It also provides that the fee may not be increased after December 31, 1993 with respect to Mexican goods that qualify under the rules of origin and may not be imposed on qualifying Mexican goods after June 29, 1999. In order to ensure that these provisions are consistent with GATT obligations, this subsection also prohibits the Secretary of the Treasury from using funds in the Customs User Fee Account to cover the costs of customs services provided in connection with imports from Canada or Mexico. This will ensure that amounts in that account will cover only the costs of processing imports from non-NAFTA countries which are not exempt from the merchandise processing fee.

Section 205: Enforcement

This section is intended to provide the Customs Service with the tools necessary to enforce the rules of origin and deter fraudulent claims. It implements Articles 501 and 502, which require Certificates of Origin for goods for which preferential tariff treatment under the NAFTA is claimed, Article 504, which requires penalties

for false certifications, Article 505, which imposes recordkeeping requirements, and Article 508, which requires each Party to provide for penalties for violations of the laws and regulations relating to NAFTA Chapter 5.

Articles 501 and 505 of the NAFTA require the completion and maintenance of certain records, including Certificates of Origin, relating to claims for preferential tariff treatment under the NAFTA. Section 205(a) amends section 508 of the Tariff Act of 1930 to require U.S. exporters and producers who execute NAFTA Certificates of Origin to maintain records relating to those certifications for at least five years from the date a Certificate of Origin is signed. Under this subsection, a person who fails to comply with these recordkeeping requirements is subject to a penalty of $10,000 or the general recordkeeping penalty under the customs laws, whichever is higher.

Subsection (a) also includes a provision to assist the Customs Service in enforcing the NAFTA drawback provisions established under Article 303 and section 203 of this Act. Any person claiming drawback on an article must disclose to Customs, within 30 days of making a drawback claim, whether that person has prepared or has knowledge that another person has prepared a NAFTA Certificate of Origin for the article. If the drawback claimant subsequently prepares or learns that another person has prepared a Certificate of Origin for that article, the claimant must inform the Customs Service. This provision is necessary to ensure that a drawback claimant does not receive a greater refund or waiver than the claimant is entitled to under the NAFTA drawback formula. The potential for excess refunds or waivers exists because paragraph 3 of NAFTA Article 502 (as implemented by section 206 of this Act) provides that importers may file claims for preferential tariff treatment under the NAFTA within one year after a good is imported. Thus, at the time a drawback claim is filed, the drawback claimant may not have prepared a Certificate of Origin with respect to that good, or may not know that a Certificate has been prepared. If the good with respect to which a drawback claim has been filed is subsequently determined to qualify for NAFTA preferential tariff treatment in the importing country, the amount of drawback the claimant is eligible to receive may be reduced by operation of the NAFTA drawback formula. Accordingly, this subsection also authorizes the Customs Service to make adjustments regarding the previous customs treatment of the article, if necessary.

Section 205(b) amends section 509 of the Tariff Act of 1930 to authorize the Customs Service to summon persons who export merchandise to a NAFTA country. This provision is necessary to assist in enforcing the NAFTA rules of origin and customs provisions.

Subsection (c) implements Articles 502 and 504. Under section 592 of the Tariff Act of 1930, importers who make false declarations of NAFTA origin are subject to penalties for fraud, gross negligence, or negligence, as appropriate. Subsection (c) implements paragraph 2(b) of Article 502, which provides that importers shall not be subject to penalties for incorrect claims if they have reason to believe that the Certificate of Origin on which the claim is based contains incorrect information and voluntarily and promptly make corrected declarations and pay any duties they may owe.

Subsection (c) also implements Article 504 by subjecting persons who make false certifications in NAFTA Certificates of Origin to the penalties for fraud, gross negligence, and negligence, as appropriate, as established under section 592 of the Tariff Act of 1930. This subsection also provides, as required in paragraph 3 of Article 504, that a person may not be subject to penalties under these provisions if the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to changed circumstances and the person voluntarily and promptly provides written notice of the change to all persons to whom the certificate was provided.

Section 206: Reliquidation of Entries for NAFTA-Origin Goods

Article 502 permits importers who did not claim preferential tariff treatment under the NAFTA at the time the good was imported to apply for a refund of excess duties paid if the good would have qualified as an originating good at the time of importation and the importer applies for a refund within one year of importation. Section 206 implements this provision by authorizing the Customs Service to reliquidate an entry and grant NAFTA tariff treatment to the entry if the importer, within one year of the date of importation, files a claim and provides such documents as may be required.

Section 207: Country of Origin Marking of NAFTA Goods

Section 207 implements both Article 311 (regarding country of origin marking requirements) and Article 510 (providing Mexican and Canadian exporters and producers a right to appeal marking determinations). Both obligations are implemented through amendments to section 304 of the Tariff Act of 1930.

Article 311 and Annex 311 require the NAFTA Parties to "accept any reasonable method of marking a good . . . including the use of stickers, labels, tags or paint, that ensures that the marking is conspicuous, legible, and conspicuously permanent." In order to comply with this obligation, section 207(a) authorizes, for NAFTA-origin goods, certain additional exemptions from the marking requirements of section 304 of the Tariff Act of 1930: (1) where the buyer reasonably knows (instead of "necessarily knows" as under current law), by reason of the character of the goods or the circumstances of their importation, that they are NAFTA-origin goods; (2) for original works of art; and (3) for ceramic bricks, semiconductor devices, and integrated circuits. Subsection (a) also provides that the special provisions regarding the marking of containers do not apply with respect to certain identified goods.

In accordance with Annex 311, section 207(a) also amends section 304 of the Tariff Act of 1930 to provide that certain pipes and fittings may be marked by means of continuous paint stenciling in addition to the methods provided in section 304(c)(1) and that certain manhole rings or frames may be marked with "an equally permanent method of marking" in addition to the methods currently provided in section 304(e). Conforming changes are also made to section 304(c)(2) of that Act. The Committee believes that, with respect to iron or steel pipes and tubes, continuous paint stenciling will best accomplish the requirements of section 304 of the Tariff Act of 1930 that goods be marked as legibly, indelibly and perma-

nently as the article permits. The Committee believes that this requirement is fully consistent with NAFTA Annex 311. The Committee notes that continuous paint stenciling of technical information on the outside of the pipe is generally required by the ASTM and the API specifications that govern the production of the majority of these products. It is the Committee's belief that the additional continuous paint stenciling of the country of origin will not burden foreign producers and will contribute to the ability of the ultimate purchaser to know the origin of the product purchased.

Section 207(a) also implements Article 510, which gives Mexican and Canadian exporters and producers substantially the same rights of appeal under U.S. law as those available to importers for marking determinations. This subsection amends section 304 of the Tariff Act of 1930 to provide that, upon request, Customs will provide to an exporter or producer the basis for an adverse marking determination. If the importer of the merchandise protests the determination, the exporter or producer may intervene in the protest. In such cases, the rights of the exporter or producer are subordinate to the rights of the importer. If, however, the importer does not protest the determination, the exporter or producer may petition the Customs Service for review. If the determination upon review is contrary to the initial determination, the determination will become effective 30 days after notice is published in the *Federal Register.*

Section 207(b) provides that NAFTA-origin goods are exempt from the marking requirements of section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988, in compliance with NAFTA Annex 311. However, such goods remain subject to the marking requirements of section 304 of the Tariff Act of 1930. The Administration, in the Statement of Administration Action accompanying the NAFTA, has stated its commitment to work with the Governments of Mexico and Canada to protect authentic products of Native Americans and to enforce strictly the marking requirements of section 304.

Section 208: Protests Against Adverse Origin Determinations

NAFTA Article 510 provides that Mexican and Canadian exporters and producers who have signed a NAFTA Certificate of Origin shall have substantially the same rights of appeal for NAFTA origin determinations as those available under U.S. law to importers. Section 208 implements this obligation by amending section 514 of the Tariff Act of 1930. The amendment also provides for consolidation of such protests. Section 508 further provides that, except where there are indications of a pattern of false or unsupported representations, an exporter or producer must be provided advance notice of an adverse origin determination.

In addition, section 208 implements paragraph 10 of Article 506 by amending section 514 of the Tariff Act of 1930 to permit the Customs Service, if it finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the NAFTA rules of origin, to deny preferential treatment to entries of identical goods from that exporter or producer.

Section 209: Exchange of Information

Article 512 requires the NAFTA Parties to cooperate in the enforcement of their respective customs laws and regulations implementing the NAFTA, in the enforcement of prohibitions or quantitative restrictions to detect and prevent unlawful transshipments of textiles and apparel, and in the exchange of statistics and storage and transmission of customs-related documentation. Section 209 amends section 628 of the Tariff Act of 1930 (which permits the Secretary of the Treasury to authorize Customs Service officials to exchange certain information or documents with foreign customs or law enforcement officials) to authorize exchanges of information with other NAFTA countries if the Secretary believes such exchanges are necessary to implement Chapters 3, 4, and 5 of the NAFTA. The NAFTA country must, however, provide assurances that it will maintain the confidentiality of the information.

Section 210: Prohibition of Drawback for Television Picture Tubes

Paragraph 8 of Article 303 prohibits duty drawback on 14-inch or larger color picture tubes manufactured in a NAFTA country for use in standard or high definition televisions exported to another NAFTA country. Section 210 implements this prohibition, which is effective upon entry into force of the NAFTA.

Section 211: Monitoring of Television and Picture Tube Imports

Section 211 requires the Customs Service to monitor, for five years, imports of color televisions from NAFTA countries and to exercise all U.S. rights under Chapter 5, including conducting verifications, to ensure full compliance with the rules of origin and full implementation of the NAFTA duty drawback obligations so that Customs can make correct duty assessments. This section requires Customs to make the results of its monitoring and verification available to the President and to USTR. If, based on such information, the President has reason to believe that color picture tubes intended for ultimate consumption in the United States are entering another NAFTA country in a manner inconsistent with the provisions of the NAFTA, or that such tubes have been undervalued in a manner that may raise concerns under U.S. trade laws, the President shall promptly take such actions as are appropriate under relevant provisions of the NAFTA and applicable U.S. trade statutes.

The Committee has received a letter, dated November 17, 1993, from USTR Kantor regarding the interpretation and implementation of section 211. In that letter, Ambassador Kantor noted that the Statement of Administrative Action accompanying the NAFTA failed to provide a full statement of the Administration's intentions with respect to section 211 and that he was writing the Committee at the President's request to clarify the record and make the Committee aware of the clarification. The three paragraphs that follow, which were transmitted to the Administration as the joint recommendation of the Committees on Finance and Ways and Means with respect to section 211, represent the intentions of the Administration, as well as the intentions of the Committees, regarding the implementation of this section.

For five years from date of enactment of this Act, the Customs Service will monitor the volume of imports into the United States from other NAFTA countries under subheading 8528.10 (14" or larger color televisions) to verify compliance of such imports with the rules of origin in Annex 401 and to ensure full implementation of duty drawback commitments in Article 303 and Annex 303.8 by other NAFTA countries. If necessary to verify compliance and ensure full implementation, the United States will promptly invoke all U.S. rights under the NAFTA, including Articles 512 and 513.

In addition, the Customs Service will monitor, for five years, the value for duty assessment purposes of materials imported into other NAFTA countries under subheading 8540.11 (14" or larger color picture tubes) for incorporation into products imported into the United States under subheading 8528.10. If, based on such monitoring and on additional information supplied by the domestic industry, the Customs Service has reason to believe that such materials have been improperly valued at the time of importation into the territory of another NAFTA country, the United States will promptly invoke all U.S. rights under the NAFTA, including Articles 512 and 513, to achieve proper duty assessment.

To implement this section, the Customs Service will report the data collected under section 211(a) to USTR on a monthly basis for five years. If, during this period, the President has reason to believe, based on these data and upon any additional information supplied by the domestic industry, that material classified under subheading 8540.11 intended for ultimate consumption in the United States is entering the territory of a NAFTA country in a manner that is inconsistent with the provisions of the NAFTA, including those identified in section 211(a) of the implementing bill, or has been undervalued in a manner that may raise concerns under U.S. trade laws, the President will promptly take such actions as are appropriate under the authority of all relevant provisions in the NAFTA, including Article 317 and Chapter 20, and under applicable U.S. trade statutes.

These monitoring requirements are necessitated by the Committee's concern that U.S. antidumping orders continue to be circumvented. It is the Committee's expectation that this provision will give the Administration the tools necessary to ensure that any circumvention that is occurring within NAFTA countries will cease.

Section 212: Title VI Amendments

Section 212 provides that, where the Customs Modernization Act provisions contained in Title VI of this Act amend the same laws as Title II, the amendments in Title II are to be executed after the amendments made by Title VI. This is necessary to ensure full compatibility between the provisions of Titles II and VI.

Section 213: Effective Dates

This section sets forth the effective dates for the provisions in Title II.

TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

SUBTITLE A—SAFEGUARDS

Most trade agreements to which the United States is a party include a safeguard provision (also referred to as an "escape clause") to address the concerns of workers and industries that believe they may be adversely affected by trade liberalization. These provisions permit the temporary imposition of import restrictions if industries have been injured by substantial increases in imports. Safeguards are permitted under GATT Article XIX, subject to certain restrictions, and are implemented in U.S. law under sections 201 through 204 of the Trade Act of 1974. The NAFTA, similar to the CFTA, includes provisions regarding the treatment of imports from Canada and Mexico in global safeguard actions taken under the authority of section 201. Part 2 of Subtitle A enacts these provisions (found in NAFTA Article 802) into law.

In addition, the NAFTA includes a special bilateral safeguard, which permits the temporary reimposition of MFN tariffs if a U.S. industry is harmed by imports from Mexico that have increased as a result of the NAFTA. The NAFTA bilateral safeguard is modeled after the bilateral safeguard established in the CFTA, with some modifications. Sections 301 through 307, described below, implement the bilateral safeguard provisions, as set forth in NAFTA Article 801 and Annex 801, that will apply to U.S.-Mexican trade and carry forward the bilateral safeguard provisions of the CFTA, which will continue to apply to goods from Canada.

Part 1—Relief From Imports Benefiting From the Agreement

Section 301: Definitions

Section 301 defines the terms "Canadian article" and "Mexican article" for purposes of applying the bilateral safeguard provisions set forth in Chapter 8 of the NAFTA and implemented in sections 302 through 307 of this bill.

Section 302: Commencing of Action for Relief

Section 302(a) authorizes an entity (including a trade association, firm, union, or group of workers) that is representative of an industry to file with the ITC a petition requesting relief from imports from a NAFTA country or countries for the purpose of adjusting to the obligations of the NAFTA. Subsection (a) also provides that petitioners may request provisional relief, as provided under section 202 of the Trade Act of 1974, from surges of imports of perishable products from Mexico or Canada after the ITC monitors imports of such products for at least 90 days. Petitioners may also apply for accelerated relief (within 127 days rather than the normal 240 days) with respect to imports of non-agricultural products from Mexico or Canada if they allege critical circumstances; such an allegation must, however, be made before the 90th day after an investigation is initiated.

Under subsection (b), upon the filing of a petition, the ITC shall investigate whether, as a result of a tariff reduction or elimination provided for under the NAFTA, a Canadian article or a Mexican article is being imported into the United States in such increased

quantities, in absolute terms, and under such conditions that imports of the article, alone, constitute a substantial cause of serious injury or, in the case of a Mexican article, a threat of serious injury to a domestic industry producing a like or directly competitive article. The "threat" standard does not apply to imports from Canada because the NAFTA incorporates the CFTA bilateral safeguards provision which does not permit a bilateral safeguard action to be taken in the case of threat of injury as a result of imports from Canada.

For the purposes of the ITC injury determination, subsection (c) makes certain provisions of section 202 of the Trade Act of 1974 applicable to determinations in bilateral safeguard actions under the NAFTA. These provisions relate to: the factors to be taken into account in determining serious injury and, where applicable, threat of serious injury; the domestic industry; the definition of substantial cause and factors to be considered in determining substantial cause; and the requirement for public hearings and opportunity for comment.

Subsection (d) provides that these bilateral safeguard provisions do not apply to textile and apparel articles, which are subject to a separate safeguard provided under Chapter 3 of the NAFTA. In addition, as required by paragraph 2(d) of Article 801, relief under the NAFTA bilateral safeguard may be provided only once during the transition period against a particular good. (The transition period is 10 years, except for goods in the longer tariff phase-out schedules, in which case the transition period corresponds to the length of the tariff phase-out.)

Section 303: ITC Action on Petition

Section 303(a) requires the ITC to make its injury determination, as well as its determination with respect to an allegation that critical circumstances exist, within 120 days after an investigation is initiated. If the determination is affirmative, the ITC must, as provided under subsection (b), find and recommend to the President the amount of import relief that is necessary to remedy or, in the case of imports from Mexico, prevent the injury.

Subsection (c) requires the ITC to report to the President within 30 days after its determination, and, as required by subsection (d), make its report public (except for confidential information).

In the event that the ITC Commissioners are equally divided on the questions of injury or remedy, section 303(e) provides that the provisions of section 330(d) of the Tariff Act of 1930 will apply.

It is the Committee's intent that, for purposes of determining whether a reduction in duty has occurred (as required to trigger the bilateral safeguard under Article 801), the ITC shall consider the expansion of a quota under a tariff-rate quota as a reduction in a duty. The Committee endorses the Statement of Administrative Action's position with respect to this issue. The Committee also welcomes the Statement of Administrative Action's statement with respect to ITC review of import trends. The Committee believes that, in determining whether increased imports are a substantial cause of serious injury, or threaten serious injury, the ITC should examine trends in imports and changes in the marketplace over the most recent years. Particularly in the case of agricultural im-

ports, where import volumes may have been affected by natural disasters, the fact that imports in a given year may be lower than in a prior year does not necessarily lead to the conclusion that imports have not been increasing. The Committee believes that bilateral safeguard action should not necessarily be precluded in such circumstances.

Section 304: Provision of Relief

Section 304 includes provisions relating to the nature and duration of the relief that the President may provide. Within 30 days after receiving an affirmative determination from the ITC regarding a petition for a bilateral safeguard action, the President shall, under subsection (a), provide relief to the extent necessary to remedy or, in the case of imports from Mexico, prevent the injury. Action is not required, however, as provided in subsection (b), if the President determines that the provision of import relief will not provide greater economic and social benefits than costs.

Subsection (c) implements paragraph 1 of Article 801, which limits the types of relief that may be provided under the NAFTA bilateral safeguard. In general, relief is limited to the suspension of further duty reductions or an increase in the rate of duty to the lesser of the MFN rate of duty on the article at the time of the safeguard action or the MFN rate imposed on the date the NAFTA entered into force (for products from Mexico) or the date the CFTA entered into force (for products from Canada). For products subject to seasonal duties, the President may increase the rate of duty to a level that does not exceed the MFN rate of duty imposed on the product during the corresponding season before the NAFTA or CFTA, as applicable, entered into force.

As mandated by paragraph 2(c) of Article 801, subsection (d) provides that relief may not exceed three years except that a one-year extension is permissible for certain import-sensitive articles if certain conditions are met.

In addition, section 304(e) implements paragraph 2(e) of Article 801 which establishes the duty rates that will apply to articles from Mexico when a bilateral safeguard action terminates. Under this provision, the rate of duty that will apply for the remainder of the year after import relief is terminated will be the rate that would have been in effect one year after the bilateral safeguard action was initiated. For subsequent years, the President may impose either the rate of duty that conforms to the U.S. tariff phase-out schedule or the rate that will achieve the elimination of the tariff in equal annual stages by the date set out in the U.S. tariff phase-out schedule.

Section 305: Termination of Relief Authority

As is the case with respect to the CFTA bilateral safeguard, the NAFTA bilateral safeguard applies only during the transition period. Thus, section 305 provides that no import relief may be provided under the bilateral safeguard after December 31, 1998 for goods from Canada (the end of the CFTA transition period) or after the appropriate transition period under the NAFTA (10 years or, in the case of products with longer transition periods, the length

of the transition period), unless Canada or Mexico consents to the application of the safeguard beyond those periods.

Section 306: Compensation Authority

Paragraph 4 of Article 801 requires any NAFTA Party that takes a bilateral safeguard action to compensate the country whose goods have been affected by the action. Compensation shall take the form of concessions that have substantially equivalent trade effects or that are equivalent to the value of the additional duties expected to result from the safeguard action. Section 306 authorizes the President to provide such compensation.

Section 307: Submission of Petitions

Section 307 allows a petitioner to submit petitions for bilateral and global safeguard actions separately or at the same time. If they are submitted at the same time, section 307 provides that the ITC will consider the petitions jointly.

Section 308: Special Tariff Provisions for Canadian Fresh Fruits and Vegetables

Section 308 amends section 301(a) of the CFTA Act, which implements a provision of the CFTA that allows for imposition of a temporary duty (a "tariff snapback" up to the MFN rate of duty) on certain fresh fruits and vegetables if two conditions are met: (1) for each of five consecutive days, the import price of the Canadian product is below 90 percent of the corresponding five-year average monthly import price; and (2) the planted U.S. acreage for the product is no higher than the average planted acreage over the preceding five years (excluding the years with the highest and lowest acreage). Any duty imposed shall terminate by the earlier of the day following the last of five consecutive days in which the product's point of shipment price in Canada exceeds 90 percent of the corresponding five-year average monthly price, or the 180th day after the date on which the duty first took effect.

Section 308 establishes a three-step procedure for the imposition of this temporary duty. First, the Secretary of Agriculture determines whether both of the above conditions exist and, on making such a determination, immediately submits it for publication in the *Federal Register*. Second, not later than six days after such publication, the Secretary shall decide whether to recommend to the President the imposition of a temporary duty. Third, if the Secretary makes such a recommendation, not later than seven days after receiving it the President shall decide whether to impose the temporary duty.

Section 308 provides further that the Commissioner of Customs and Director of the Census Bureau shall provide the Secretary with timely information concerning the importation of Canadian fresh fruits or vegetables, and importers shall report such information as the Commissioner of Customs requires.

This amendment, effective on the date of enactment of the implementing bill, is intended to improve the effectiveness of the tariff snapback by ensuring that relief is provided in a timely manner. This responds to concerns that application of section 301(a) of the CFTA Act may have been frustrated in the past because of admin-

istrative delays in deciding whether to recommend the granting of relief.

Section 309: Price-Based Snapback for Frozen Concentrated Orange Juice

Section 309 establishes a price-based tariff snapback applicable to U.S. imports of frozen concentrated orange juice from Mexico. The tariff on imports that exceed the threshold quantities—imports above 264,978,000 liters (70 million gallons) during 1994 through 2002 and 340,560,000 liters (90 million gallons) during 2003 through 2007—will "snap back" automatically, reverting to the lesser of (1) the prevailing MFN rate, or (2) the rate in effect on July 1, 1991, if the futures price for frozen concentrated orange juice in the United States falls below a historical average price for a period of five consecutive days. This temporary duty will cease to apply if the futures price then is above the historical average price for five consecutive days. The Secretary of Agriculture shall publish determinations that the tariff snapback has been triggered and removed in the Federal Register.

Part 2—Relief From Imports From All Countries

Sections 311 and 312 implement Article 802, which requires the President to exclude imports from Mexico and Canada from global safeguard actions unless certain conditions are met.

Section 311: NAFTA Article Impact in Import Relief Cases Under the Trade Act of 1974

Section 311(a) requires the ITC, at the time it makes an affirmative determination in an action initiated under section 201 of the Trade Act of 1974, to report to the President whether imports from a NAFTA country, considered individually, account for a substantial share of total imports of the article under investigation and whether such imports, considered individually or, in exceptional circumstances, considered collectively, contribute importantly to the serious injury or threat thereof.

Subsection (b) provides guidelines for determining whether imports from a NAFTA country account for a substantial share of total imports. Normally, such imports will not be considered to account for a substantial share of total imports if the country is not among the top five suppliers of the article subject to investigation during the most recent three-year period. Similarly, subsection (b) provides that the ITC normally will not consider imports from NAFTA countries to "contribute importantly" to injury or threat of injury if the growth rate of imports from such countries is appreciably lower than the growth rate of total imports from all sources over the same period. Subsection (c) defines "contribute importantly" to mean an important cause, but not necessary the most important cause; this is the same standard as is used in the CFTA.

Section 312: Presidential Action Regarding NAFTA Imports

Section 312(a) requires the President to make essentially the same determination as the ITC as to whether imports from NAFTA countries represent a substantial share of total imports and whether they contribute importantly to the injury or threat of injury. The

Committee expects that the President will take into account the determination made by the ITC with respect to these issues; however, the President is not bound by the ITC recommendation. If the President finds in the affirmative, he is required, under subsection (b), to exclude imports from NAFTA countries from any global relief imposed. However, if they are excluded and the President thereafter determines that a surge in imports from a NAFTA country is undermining the effectiveness of the relief, the President may take appropriate action to include such imports in the action.

The domestic industry on whose behalf the global action is taken may petition the ITC to investigate such an import surge. In such cases, the ITC must submit the findings of its investigation to the President within 30 days after the petition is filed. If a global safeguard action proclaiming a quantitative restriction is applied to imports of NAFTA countries, such action must, under subsection (d) and pursuant to paragraph 5 of Article 802, permit the importation of a quantity or value of the article from the relevant NAFTA country which is not less than the quantity or value of such article imported into the United States during the most recent representative period, with allowance for reasonable growth.

The Committee endorses the clarifications and commitments provided in the Statement of Administrative Action with respect to the application of bilateral and global safeguard actions to imports of certain major household appliances. The Committee intends to monitor any such safeguard actions closely to ensure that the ITC applies the guidelines set forth in the Statement of Administrative Action.

Part 3—General Provisions

Section 315: Provisional Relief

Section 315 makes citrus products eligible for provisional relief under section 202(d) of the Trade Act of 1974, which provides for an expedited ITC investigation and determination with respect to perishable agricultural products. Citrus products that will be explicitly eligible under this provision for such procedures are processed oranges, processed grapefruit, and orange and grapefruit juice (including concentrate).

Section 316: Monitoring

Section 316 requires the ITC to monitor imports of tomatoes and peppers for 10 years. This will allow for an expedited determination concerning import relief with respect to these commodities. At the request of the ITC, the Department of Agriculture and the Customs Service shall provide it with information needed for such monitoring.

Section 317: Procedures Concerning the Conduct of ITC Investigations

Section 317 requires the ITC to adopt such procedures and rules and regulations as necessary to bring its procedures into conformity with Chapter 8. Subsection (b) further provides that the procedures set forth in section 332(g) of the Tariff Act of 1930 concerning the release of confidential business information will apply to in-

formation received by the ITC in the course of investigations conducted under the NAFTA bilateral safeguard provisions and global safeguard provisions.

Section 318: Effective Date

This section provides the effective dates for the provisions of Subtitle A.

Section 321: Agriculture

Section 321(a) amends the Meat Import Act of 1979 to exclude qualifying Mexican meat articles (as determined in accordance with the NAFTA's rules of origin) from that Act's formula calculations, which establish the quantities of meat articles that may be imported without triggering the imposition of an import quota. It also removes Mexico from the supplying countries to which any allocated meat import quota would apply; Canada already receives the same treatment pursuant to the CFTA Act. Finally, it authorizes the President to exclude from the import limitations certain high-quality beef specially processed into fancy cuts that originates in a NAFTA country under the NAFTA rules of origin.

The Meat Import Act's application to Canada continues to be subject to section 301(b) of the CFTA Act, including subsection (b)(5), which authorizes the President to impose restrictions on imports of Canadian meat articles where he determines this is necessary to prevent frustration of the Meat Import Act's limitations on imports from other countries.

The remainder of section 321's provisions on agriculture are not within the jurisdiction of the Committee on Finance.

TITLE IV—DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

Chapter 19 of the NAFTA, like Chapter 19 of the CFTA, establishes a mechanism for resolving disputes among the NAFTA countries arising from antidumping and countervailing duty determinations. In essence, judicial review of antidumping and countervailing duty determinations is replaced by a binational panel process. The process will operate, for the most part, as it operates under the CFTA. In addition, like the CFTA, the NAFTA includes extraordinary challenge procedures that will allow a Party to challenge binational panel decisions if there are allegations that a panel member was guilty of gross misconduct, bias or a serious conflict of interest, or a panel seriously departed from fundamental rules of procedure, or manifestly exceeded its powers, as long as other criteria are also met. Unlike the CFTA, the NAFTA expressly provides that a panel that fails to apply the appropriate standard of review may be determined to have manifestly exceeded its powers. In addition, the NAFTA includes a special safeguard for the binational panel process—a safeguard that is not included in the CFTA. Under Article 1905, if a Party alleges that another NAFTA Party has, through the application of its domestic law, frustrated the binational panel process, consultations are required. If these do not resolve the problem, the complaining Party may request the establishment of a "special committee" to review the allegation. If, after an affirmative determination by the special committee, the Parties are still not

able to resolve the conflict, the complaining Party may suspend the operation of the binational panel process.

Title IV implements Chapter 19 by amending existing U.S. law relating to the CFTA binational panel process to reflect the extension of the process to goods from Mexico, establishing procedures for requesting binational panel review, providing an organizational structure for administering the binational panel process, and providing transitional provisions in the event that the binational panel review process is terminated as a result of action under Article 1905. Title IV also makes conforming changes to other U.S. laws to reflect the expansion to Mexico of the binational panel process established under the CFTA. Because the binational panel process under the NAFTA is modeled after the CFTA binational panel process, the Committee's report (Senate Report 100–509) accompanying H.R. 5090, the CFTA Act, continues to reflect the Committee's views with respect to those elements of the binational panel process that are carried forward to the NAFTA, where amendments have been made by this Title only to extend the process to goods from NAFTA countries.

SUBTITLE A—ORGANIZATIONAL, ADMINISTRATIVE, AND PROCEDURAL PROVISIONS REGARDING THE IMPLEMENTATION OF CHAPTER 19 OF THE NAFTA

Section 401: References in Subtitle

Section 401 provides that, for this Subtitle, the terms "annex," "chapter" and "article" refer to provisions of the NAFTA.

Section 402: Organizational and Administrative Provisions

Annex 1901.2 of the NAFTA provides for the establishment of binational panels and the selection of individuals to serve as panelists. On the date the NAFTA enters into force, Annex 1901.2 requires the Parties to establish and thereafter maintain a roster of individuals to serve as panelists under Chapter 19. Unlike the CFTA, the NAFTA requires that these rosters shall include judges and former judges to the fullest extent practicable. The parties are required to consult in developing the roster of at least 75 candidates, with each Party selecting at least 25 candidates, all of whom must be U.S., Mexican, or Canadian citizens. As required by Annex 1901.2, panelists must be of good character, high standing and repute, and are to be chosen strictly on the basis of objectivity, reliability, sound judgment, and general familiarity with international trade law. Further, candidates may not be affiliated with, or take instructions from, a Party. Panels will be comprised of five persons. Within 30 days of a request for a panel, each involved Party will appoint two panelists, in consultation with the other involved Party. Each Party will have the right to exercise four peremptory challenges. If the involved Parties are unable to agree on the selection of a fifth panelist, the Parties will decide by lot which Party will select the fifth panelist.

For extraordinary challenge committees and special committees established under Articles 1904 and 1905, respectively, committee members will be selected from a 15-person roster comprised of judges or former judges. Each Party will name five persons to the

roster. Committees will be comprised of three persons. Upon a request for the establishment of a special committee or extraordinary challenge committee, each Party will select one member from the roster and the involved Parties will decide by lot which Party will select the third member from the roster.

Section 402 sets forth the procedures the United States will follow in selecting individuals for placement on Chapter 19 rosters. One procedure, described in subsection (b), applies only to judges of courts created under Article III of the Constitution. The other procedure, provided in subsection (c), applies to all other persons, and is identical in most respects to the roster selection process established under the CFTA Act.

Subsection (a) provides that all candidates must meet the general selection criteria, as set forth in Annex 1901.2 (regarding the establishment of binational panels) and Annex 1904.13 (regarding the establishment of extraordinary challenge committees); these criteria are described above. This subsection also requires that the selection of individuals for placement on candidate lists and rosters and for appointment to binational panels, extraordinary challenge committees, and special committees must be made without regard to political affiliation.

Subsection (a) further provides that the rosters of potential panelists shall be comprised to the fullest extent practicable of judges and former judges and requires the USTR to appoint judges and former judges to serve on panels and committees convened under Chapter 19, subject to their availability. This subsection implements the obligations of Annex 1901.2, which, as described above, expresses a preference for the inclusion of judges and former judges on Chapter 19 rosters. In requiring the USTR to appoint judges where they are available, subsection (a) takes into account the existing canons of the Code of Conduct for United States Judges. Under Canon 5G, Federal judges may undertake responsibilities outside the scope of their judicial duties if Congress authorizes the appointment of judges as long as service would not, in the judge's view, interfere with the performance of judicial responsibilities or otherwise impair public confidence in their integrity or impartiality.

The Committee strongly believes that judges and former judges should be encouraged to serve on binational panels. As discussed in greater detail in a later section of this report, the Committee is concerned that binational panels constituted under the CFTA have, in several cases, failed to apply the appropriate standard of review. The Committee believes that this problem could be ameliorated to some extent through the participation of judges and former judges in the panel process. In addition, the Committee believes that the use of judges and former judges may avoid potential conflict of interest problems that may arise when members of the trade bar, trade consultants, or other experts in international trade are appointed to serve on binational panels and committees. The Committee recognizes that these individuals are sometimes called upon to make decisions regarding issues that may arise in other cases in which they or their firms are participating. It may be difficult to ensure that panelists fully segregate their client interests from their responsibilities on binational panels. Again, the Committee

believes that appointing sitting judges to binational panels could help avoid potential conflicts. While the Committee recognizes that it is unlikely that judges will be available for service in sufficient numbers to ensure that only judges are selected for Chapter 19 panels, the Committee believes that the USTR should appoint the maximum number of judges and former judges possible. To this end, the Committee urges the USTR to look not only to sitting Article III judges, but also to Administrative Law Judges and retired judges who meet the qualifications set forth in Annex 1901.2.

Subsection (b) establishes a special process for the appointment of Article III judges to serve on Chapter 19 panels and committees. Under this subsection, the USTR is required to consult with the chief judges of the Federal judicial circuits regarding the interest in, and availability for, the participation in Chapter 19 panels and committees of judges within their circuits. The chief judge will identify interested and available judges for the Chief Justice of the United States, who may submit any names to the USTR. Any judges whose names are submitted shall be placed on the roster, and the names of such judges shall be forwarded to the Senate Committees on Finance and the Judiciary and House Committees on the Judiciary and Ways and Means. Before making an appointment to a panel, the USTR is required to consult with the judge to determine her or his availability. The Committee recognizes that these special procedures for the appointment of Article III judges have been developed to address potential separation-of-powers issues and take into account the workload of individual judges as well as the workload of the circuit in which they sit. Nonetheless, the Committee hopes that a substantial number of judges will be available for appointment to Chapter 19 panels and committees, particularly given the fact that, but for the binational panel process, appeals of antidumping and countervailing duty determinations would be heard in Federal courts.

Subsection (c) sets forth the selection process for individuals other than Article III judges. This process parallels the panelist selection process established in section 405 of the CFTA Act. The NAFTA selection process includes, however, one element not included in the CFTA Act. At the time that candidate lists are submitted to the Committees on Finance and Ways and Means, the USTR will be required to submit a statement of professional qualifications for each individual proposed to be included on the roster. The Committee's expectations are described more fully below.

Subsection (c) establishes the following procedures for placing individuals on Chapter 19 rosters:

(1) *Establishment of an interagency group.*—An interagency group chaired by USTR will: (a) prepare by January 3 of each year a list of individuals qualified to serve as members of binational panels, extraordinary challenge committees, or special committees convened under Chapter 19; (b) prepare by July 1 of each year a list of individuals qualified to be added to the final candidate list if the USTR so requests; (c) oversee the administration of the United States Section (authorized under section 105 of this bill); and (d) make recommendations to the USTR regarding the convening of extraordinary challenge committees.

(2) *Preliminary candidate lists.*—The USTR shall select individuals from the lists for placement on preliminary candidate lists to serve on panels or committees and, by January 3 of each year, shall submit these lists to the Committees on Finance and Ways and Means.

(3) *Information required by Committees.*—At the time the USTR submits candidate lists, it shall submit to the Committees on Finance and Ways and Means a statement of professional qualifications for each individual. The Committee intends that the statement include, in addition to a resume or general biographical data, a list of clients represented by the individual or her or his firm, or other information the Committee deems appropriate. The Committee believes that the Committee will be better able to ensure that the most qualified individuals are selected for placement on Chapter 19 rosters and to screen prospective panelists for potential conflicts of interest if this additional information is provided.

(4) *Final candidate lists and amendments.*—The USTR may add or delete individuals after consulting with the Committees and providing written notice of any addition or deletion. By March 31 of each year, the USTR shall submit to the Committees final lists of candidates selected by the USTR as eligible to serve on panels and committees convened under Chapter 19 during the one-year period beginning on April 1. An individual not on a preliminary list may be included on the final candidate list only if the USTR provided written notice of the addition to the Committees at least 15 days before submission of that final list. No additions may be made to the final lists for a particular year after they are submitted to the Committees unless the USTR, before July 1 of that year, determines that additional individuals are needed. A similar selection, Committee notice and consultation process then applies, and the USTR must submit the final form of any proposed amendment to a final candidate list to the Committees by September 30 of that year to take effect on October 1 for eligibility to serve during the next six months, to April 1 of the following year.

Section 402(d) provides that only the USTR is authorized to select individuals for placement on rosters or appoint individuals to binational panels, extraordinary challenge committees, or special committees on behalf of the United States. This provision tracks current law with respect to the CFTA panel process. Selection and appointment must be made from the lists of Article III judges provided to the Senate Committees on Finance and the Judiciary and House Committees on Ways and Means and the Judiciary or from the final candidate lists, or final forms of amendments to the candidates lists, submitted to the Committees on Finance and Ways and Means. The Committee recognizes that a need may arise for the selection of panelists during the three-month period after the NAFTA enters into force, and therefore before the process established in sections 402(b) and (c) can be completed. Accordingly, subsection (d) provides that individuals may, during that three-month period, be chosen from the preliminary candidate lists submitted to the Committees on Finance and Ways Means.

The selection process established in subsections (b) and (c) assumes that the NAFTA will enter into force on January 1, 1994. If the NAFTA enters into force at a later date, the roster selection process will have to proceed on a different timetable for the remainder of the calendar year in which the NAFTA enters into force. Subsection (e) sets out the transitional timetable.

Subsection (f) provides that, except for violations of protective orders or undertakings covering proprietary information, individuals serving as panelists, and the assistants to such individuals, shall be immune from suit and legal process relating to acts performed in their official capacity. This provision tracks existing law with respect to the CFTA panel process.

Under subsection (g), the administering authority (currently the International Trade Administration of the Department of Commerce), the ITC, and the USTR are authorized to issue such regulations as are necessary or appropriate to carry out their responsibilities under Chapter 19. Initial regulations, if any are required, are to be issued before the NAFTA enters into force.

Section 402(h) requires the USTR, at the time of submission of the final candidate lists and the final forms of amendments to candidate lists, to submit to the Senate Committees on Finance and the Judiciary and the House Committees on the Judiciary and Ways and Means a report on the efforts made to secure the participation of judges and former judges on binational panels, extraordinary challenge committees, and special committees. The Committee intends to review these reports carefully to ensure that the USTR is making best efforts to ensure that judges and former judges are serving on Chapter 19 panels and committees to the fullest extent practicable.

Section 403: Testimony and Production of Papers in Extraordinary Challenges

Paragraph 13 of Article 1904 provides that an extraordinary challenge committee may be convened if a NAFTA Party alleges that a panelist is guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct. Section 403 provides measures to assist an extraordinary challenge committee in investigating any such allegations; similar provisions were provided under section 407 of the CFTA Act. This section gives an extraordinary challenge committee access to relevant documents, and provides the authority to summon witnesses, take testimony, administer oaths, require the production of documents, issue subpoenas, and order depositions. Under this section, an extraordinary challenge committee may request the Attorney General to invoke the aid of any district or territorial court of the United States in compelling the attendance and testimony of witnesses and the production of documents.

The Committee recognizes that the right to invoke extraordinary challenge procedures is, under the NAFTA as under the CFTA, reserved to the Governments of the NAFTA countries. The Committee urges the Administration, however, to provide the private sector with guidance as to how private parties may request the Administration to pursue an extraordinary challenge. The Committee is mindful that the rights of private parties are at stake in the de-

terminations made by the binational panels and the Committee believes, therefore, that interested parties should be heard by the Administration before it decides whether to request the establishment of an extraordinary challenge committee.

Section 404: Requests for Review of Determinations by Competent Investigating Authorities of NAFTA Countries

Section 404 sets forth the procedures for requesting binational panel review under Chapter 19. Subsection (b) authorizes the U.S. Secretary, as identified in Article 1908, to request binational panel review of final antidumping and countervailing duty determinations. Under subsection (c), a person within the meaning of paragraph 5 of Article 1904, may request binational panel review by filing a timely request with the U.S. Secretary; if such a request is filed, it will be deemed to be a request for binational panel review under Article 1904. Subsection (d) requires the U.S. Secretary to notify all persons who would otherwise be entitled under the law of the importing country to commence proceedings for judicial review of a determination whenever binational panel review of a final determination is requested. These procedures parallel the procedures established in section 408 of the CFTA Act.

Section 405: Rules of Procedure for Panels and Committees

The Parties are required to develop rules of procedure for binational panels (in accordance with paragraph 14 of Article 1904), for extraordinary challenge committees (in accordance with paragraph 2 of Annex 1904.13), and for special committees (in accordance with Annex 1905.6). Binational panels rules are to be developed by January 1, 1994, and extraordinary challenge committee and special committee rules by the date of entry into force of the NAFTA. Section 405 authorizes the Department of Commerce to prescribe such rules and requires that they be published in the *Federal Register.*

Section 406: Subsidy Negotiations

Article 1907(2) of the NAFTA provides that the NAFTA countries will consult on the potential for (1) development of more effective rules and disciplines on the use of government subsidies; and (2) reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization. This revises the mechanism under Article 1907 of the CFTA, which established a working group to develop, within five-to-seven years, more effective rules and disciplines on government subsidies and a substitute system of rules for dealing with subsidization and unfair pricing. Pursuant to that provision, section 409(a) of the CFTA Act granted the President authority to negotiate an agreement with Canada to provide for increased disciplines on subsidies and to deal with subsidization and unfair pricing. The working group mechanism under Article 1907 of the CFTA, however, proved inadequate to address continuing problems related to high levels of Canadian subsidization.

Section 406 sets forth the negotiating objectives of the United States with respect to subsidies, for any future trade negotiations with a NAFTA country:

(1) achievement of increased discipline on domestic subsidies provided by a foreign government, including the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations; the provision of goods or services at preferential rates; the grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and the assumption of any costs or expenses of manufacture, production, or distribution;

(2) achievement of increased discipline on export subsidies provided by a foreign government, particularly with respect to agricultural products; and

(3) maintenance of effective remedies against subsidized imports, including, where appropriate, countervailing duties.

In the Committee's view, the more detailed negotiating objectives spelled out in section 406 reflect the importance to both the U.S. Government and U.S. industries of achieving more effective rules and disciplines concerning the use of government subsidies. At the same time, they build upon the concerns set out in section 409(a) of the CFTA Act with respect to obtaining greater disciplines on Canadian subsidy programs that adversely affect U.S. industries which directly compete with subsidized imports. These objectives are also consistent with the objectives on addressing unfair trade practices, including subsidies, set forth at section 1101(b)(8) of the Omnibus Trade and Competitiveness Act of 1988. The Committee anticipates close consultation with the Administration with respect to any future subsidy negotiations conducted pursuant to Article 1907.

Section 407: Identification of Industries Facing Subsidized Imports

Section 407, which is largely consistent with section 409(b) of the CFTA Act, establishes a process for the identification of domestic industries that are likely to face subsidized imports. It provides that an entity (including a trade association, firm, union, or group of workers) that is representative of a U.S. industry may file a petition if it has reason to believe that the industry:

(1) is likely to face increased competition from subsidized imports with which it directly competes from a NAFTA country or from any other country designated by the President as benefiting from a reduction of tariffs under a trade agreement that enters into force for the United States after January 1, 1994; and

(2) is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to the United States and that country.

The industry may request that the USTR compile information or that the ITC conduct a study of the foreign practices, following the completion of which the USTR may take any appropriate action.

The Committee notes that the Statement of Administrative Action, submitted on November 4, 1993, provides that if, after receiving a petition, the USTR finds a reasonable likelihood that the industry may face both subsidization and deterioration of its competitive position but decides not to identify the industry, then it should monitor foreign government actions for potential subsidization

(with particular attention to the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations). It is the Committee's expectation that the USTR will undertake such monitoring if it finds such a reasonable likelihood but nevertheless does not identify the industry under the statute, including where they may be evidence of future subsidization but no subsidies actually have been provided at the time of the USTR's determination. This is consistent with the USTR's recent decision on the petition filed under section 409(b) of the CFTA Act by Vista Chemical Company concerning potential imports of linear alkylbenzene (LAB) production from Canada. Monitoring in that case will continue under section 407.

Section 408: Treatment of Amendments to Antidumping and Countervailing Duty Law

NAFTA Article 1902 provides that amendments to the antidumping and countervailing duty laws of a Party shall apply to goods from NAFTA Parties only if the amendment explicitly states that it applies to such goods. Section 308 implements Article 1902 by requiring that any such amendments will apply to goods from a NAFTA country only to the extent specified in the amendment. This section tracks section 404 of the CFTA Act, which implements a similar provision in the CFTA.

SUBTITLE B—CONFORMING AMENDMENTS AND PROVISIONS

Section 411: Judicial Review in Antidumping and Countervailing Duty Cases

Section 411 makes conforming changes to a number of provisions of section 516A of the Tariff Act of 1930, relating to judicial review of countervailing duty and antidumping duty proceedings. Generally, section 516A establishes the right of interested parties to judicial review of final antidumping and countervailing duty determinations. Normally, such determinations are reviewable by the Court of International Trade (CIT), whose decisions may in turn be appealed to the Court of Appeals for the Federal Circuit, and by certiorari to the U.S. Supreme Court. The CFTA Act amended section 516A to prohibit judicial review of antidumping and countervailing duty determinations involving merchandise from Canada where binational panel review was requested and to establish the rules and procedures for such binational panel review. Section 411 amends section 516A to implement the NAFTA binational panel process. For the most part, these changes merely reflect that the binational panel process will apply to goods from NAFTA Parties, just as it currently applies to goods from Canada under the CFTA.

Before describing these changes, the Committee notes that the extension of the binational panel process to merchandise from Mexico has afforded the Committee an opportunity to review the binational panel process as it has operated under the CFTA. The Committee wishes to highlight several concerns that have arisen in the course of its review.

At the outset, the Committee emphasizes that the NAFTA, just as the CFTA, *requires* binational panels to apply the same standard of review and general legal principles that domestic courts

would apply. This requirement is the foundation of the binational panel system. The Committee believes, however, that CFTA binational panels have, in several instances, failed to apply the appropriate standard of review, potentially undermining the integrity of the binational panel process.

Specifically, the Committee believes that some binational panels have not afforded the appropriate deference to U.S. agency determinations required by the United States Supreme Court in the Chevron decision (*Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 844 (1984)) and its progeny. Absent a direct conflict with the plain language of the statute, panels, like the courts for which they substitute, are restricted to examining whether the agency's view is a permissible construction of the statute. The Committee emphasizes in this regard that it is the function of the courts, and thus panels, to determine whether the agency has correctly applied the law, not to make the ultimate decision that Congress has reserved to the agency.

Second, the Committee is concerned that, in several cases, binational panels have misinterpreted U.S. law and practice in two key substantive areas of U.S. countervailing duty law—regarding the so-called "effects test" and regarding the requirement that a subsidy must be "specific" to an industry. Thus, the Committee believes it is appropriate to clarify U.S. law and practice in these two areas, so that these misinterpretations can be corrected.

Economic Effects Test.—In a recent case (*Certain Softwood Lumber from Canada,* USA–92–1904–01, Decision of the Panel (May 6, 1993)), the binational panel misinterpreted U.S. law to require that, even after the Department of Commerce has determined that a subsidy has been provided, the Department must further demonstrate that the subsidy has the effect of lowering the price or increasing the output of a good before a duty can be imposed.

Such an "effects" test for subsidies has never been mandated by the law and is inconsistent with effective enforcement of the countervailing duty law. As the Department of Commerce explained in *Certain Flat-Rolled Carbon Steel Products from Austria* (General Issues Appendix), 58 Fed. Reg. 37217, 37260 (July 9, 1993):

> Nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance. See 19 U.S.C. section 1677(6). Nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.

The Department went on to note, correctly, that Congress had explicitly rejected the use of "effects" tests in the Trade Agreements Act of 1979. As the Department noted in the "General Issues Appendix" in the *Flat-Rolled Carbon Steel Products from Austria* case (58 Fed. Reg. at 37261), "[b]ecause the statute, legislative history, judicial opinions, and the Department's regulations do not permit an analysis of the use and effect of subsidies, the Department does not attempt such an analysis."

From a policy perspective, the Committee believes that an "effects" analysis should not be required. First, "effects" analyses by nature are highly speculative. For purposes of administering the

law, it is burdensome and unproductive for the Department of Commerce to attempt to trace the use and effect of a subsidy demonstrated to have been provided to producers of the subject merchandise. Second, a strict rule that the benefit received by foreign producers as a result of government action will be offset (or countervailed) acts as a deterrent to further subsidization.

Specificity.—The Committee agrees with current Department of Commerce practice with respect to specificity—whether a subsidy is provided only to a specific enterprise or industry. In its *Proposed Regulations* (54 Fed. Reg. 23366, 23379 (May 31, 1989)), the Department set forth four factors that *may* be considered in determining whether specificity exists. Under its current practice, the Department of Commerce may base a finding that a subsidy is specifically provided on one or more relevant factors.

Several recent binational panels (*e.g, Certain Softwood Lumber from Canada,* USA–92–1904–01, Decision of the Panel (May 6, 1993); Live Swine from Canada, USA–91–1904–04, Decision of the Panel (August 26, 1992)) have misinterpreted U.S. law and practice to require the Department to consider and weigh all relevant factors. However, another binational panel (*In the Matter of Pure and Alloy Magnesium from Canada,* USA–92–1904–03, Decision of the Panel 28–35 (August 16, 1993), correctly concluded that current Department practice is proper on the question of specificity. Due to this confusion, the Committee believes it is appropriate to clarify how U.S. law should be applied.

It has been, and remains the intent of Congress that the Department have wide discretion to determine whether specificity exists in any particular case, in light of the requirement of the countervailing duty law that the Department countervail fully subsidies that are conferred on particular industries or group of industries. A finding that benefits are limited by law to a particular industry is sufficient to support a specificity finding. Furthermore, in conducting a specificity analysis, the Department correctly will find *de facto* specificity where one or more of the four factors typically considered by the Department supports a finding of specificity. One factor alone could be sufficient for a *de facto* specificity finding. For example, the Department's longstanding policy and practice, based on a correct interpretation of the law and its purpose, has been that the fact that there are too few users of a subsidy program is, in and of itself, sufficient for a finding of specificity, without an analysis of whether, for example, the industry under investigation (or group of industries) is a dominant user of the benefits of that program. If analysis of any one factor is not dispositive, the Department may review multiple factors in conjunction with one another and weigh the factors as the Department deems appropriate. If *de facto* specificity exists, the cause of the de facto specificity (*e.g.,* the inherent characteristics of the subsidy) is irrelevant.

It is the Committee's expectation that, in the future, binational panels will properly apply U.S. law and the appropriate standard of review, giving broad deference to the decisions of both the Department of Commerce and the ITC. If they do not, the Committee expects the Administration to avail itself of the extraordinary challenge procedures set forth in Annex 1904.13. Paragraph 13 of Article 1904 specifically provides that extraordinary challenge proce-

dures may be invoked where a panel has manifestly exceeded its powers, authority or jurisdiction by failing, for example, to apply the appropriate standard of review, where such action has materially affected the panel's decision and threatens the integrity of the binational panel process. Because the central tenet of Chapter 19 is that a panel must operate precisely as would the court it replaces, the Committee believes that misapplication of U.S. law in important areas is a clear threat to the integrity of the Chapter 19 process.

As provided under Annex 1904.13, the Committee believes that an extraordinary challenge committee should vacate an original panel decision or remand it to the original panel for action not inconsistent with the committee's decision if a binational panel has based its decision on a material misinterpretation of U.S. law or has failed to apply the appropriate standard of review. The Committee believes that the mere fact that a panel claims to have applied U.S. law and the proper standard of review is not a sufficient basis for an extraordinary challenge committee to uphold a panel decision if the committee's serious inquiry into the matter, as required under Annex 1904.13, reveals that the panel has not, in fact, properly applied U.S. law or the standard of review.

The paragraphs below describe the changes that section 411 makes to section 516A of the Tariff Act of 1930:

Time limits for commencing review.—Paragraph 1 of section 411 makes conforming amendments to section 516A(a) of the Tariff Act of 1930 to provide, as under the CFTA, that the 30-day time limit for requesting judicial review under section 516A shall not begin until the 31st day after the publication of notice of the antidumping or countervailing duty determination, or, in the case of scope rulings, the 31st day after notice is given to the appropriate NAFTA Government. This provision implements paragraph 15(c) of Article 1904, and recognizes that judicial review will continue to be available for antidumping and countervailing duty determinations involving merchandise from NAFTA countries if binational panel review is not requested. However, as required by Article 1904, procedures for commencing judicial review under these circumstances may not begin until after the period for requesting binational panel review has expired.

Paragraph 1 also includes a substantive change from the CFTA provisions regarding the time limits for requesting judicial review in cases where a binational panel has dismissed binational panel review for lack of jurisdiction. In such cases, if an interested party with standing to file a summons and complaint has given timely notice that it intends to seek judicial review, the time limit for filing a summons and complaint in the CIT will begin to run the day after the dismissal, rather than on the 31st day after the dismissal, as under the CFTA. However, if a request for an extraordinary challenge committee is made with respect to the dismissal, section 411(1) provides that judicial review will be stayed during the consideration of the request and the CIT shall dismiss the action if the committee vacates or remands the dismissal decision. In cases where review by the CIT is provided as a result of the suspension of the binational panel review process or because of a settlement with a NAFTA country pursuant to Article 1905(7) that specifically

provides for CIT review, the period for requesting such review shall not begin until the day after the notice of suspension or settlement is published in the *Federal Register.*

Effect of panel decisions on other cases.—Section 411(2) makes conforming amendments to section 516A(b) of the Tariff Act of 1930 to provide that, in making a decision in any judicial review proceeding brought under section 516A(a), a U.S. court is not bound by (but may take into consideration) a final decision of a binational panel or extraordinary challenge committee. The Committee intends, as was the case under the CFTA, that a binational panel decision will be binding only with respect to the particular matter before the panel and that a U.S. court's consideration of panel decisions will be limited to the intrinsic persuasiveness of the statements in those decisions. A U.S. court should view panel decisions in the same fashion as it would view statements of respected commentators on the application of U.S. law. The binational panel process is not to effect any change in the substantive law of the United States or to provide any benefit to importers of goods from third countries. Thus, panel decisions will not be binding on the CIT, even if the same or related issues are raised in court actions reviewing determinations of the Department of Commerce or the ITC.

Definitions.—Paragraph 3 of section 411 amends paragraph (f) of section 516A of the Tariff Act of 1930 by adding a reference to the NAFTA in the definition of "United States Secretary," replacing the definition of "Canadian Secretary" with a definition of the "relevant FTA Secretary" to encompass all NAFTA Parties, and by defining the terms "NAFTA," "Relevant FTA Country," and "Free Trade Area Country," which are terms used in other sections of section 516A of the Tariff Act of 1930, as amended by this bill.

Review of antidumping and countervailing duty determinations involving merchandise from NAFTA countries.—Paragraph 4 of section 411 makes conforming amendments to subsection (g) of section 516A of the Tariff Act of 1930. Subsection (g) was added to the law in the CFTA Act; it represents the core of the rules and procedures established to implement the binational panel process. Section 411(4)(A) makes conforming changes to the subsection heading.

(1) *Definition of determination.*—Paragraph 4(B) of section 411 makes conforming amendments to subsection (g)(1), which identifies the determinations made by the Department of Commerce and the ITC that are subject to binational panel review. As defined in Annex 1911, the determinations reviewable by NAFTA binational panels are: final determinations by the Department of Commerce or the ITC under sections 705 or 735 of the Tariff Act of 1930; determinations by the Department of Commerce or the ITC under section 751 of the Tariff Act of 1930; and class or kind determinations by the Department of Commerce.

(2) *Exclusive review of determinations by binational panels.*—Section 411(4)(C) makes conforming amendments to section 516A(g)(2) of the Tariff Act of 1930 to provide that, as under the CFTA Act, final antidumping and countervailing duty determinations with regard to merchandise from a NAFTA country shall not be reviewable under section 516A, and no U.S.

court has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise if binational panel review has been requested.

(3) *Exception to exclusive binational panel review.*—Paragraphs 4(D) and (E) of section 411 amend section 516A(g)(3) of the Tariff Act of 1930 to make conforming changes to the existing exceptions to the general rule that binational panel review replaces judicial review. These exceptions provide that determinations continue to be subject to judicial review under section 516A(a) if: (1) neither the United States nor the relevant NAFTA country requested review of the determination by a binational panel, but only if the Party seeking judicial review has provided timely notice of its intent to commence such review to the relevant Secretaries, all interested parties to the proceeding, and the administering authority or the ITC, as appropriate; (2) the determination is a revised determination issued as a direct result of judicial review if neither the United States nor the relevant NAFTA country requested review of the original determination; (3) the determination is issued as a direct result of judicial review that was commenced prior to entry into force of the NAFTA; or (4) the determination is not reviewable by a binational panel. Paragraph 4(D) provides a fifth exception to binational panel review to reflect the provisions of NAFTA Article 1905 safeguarding the binational panel process: judicial review is available if the binational panel process is suspended pursuant to paragraph 12 of Article 1905. These exceptions track the exceptions found in paragraph 12 of Article 1904.

(4) *Exception to exclusive binational panel review for constitutional issues.*—Paragraph 4(F) of section 411 makes conforming amendments to section 516A(g)(4) of the Tariff Act of 1930 to apply to the NAFTA binational panel process the procedures set up under the CFTA with regard to constitutional challenges to the binational panel system and to constitutional issues that may arise out of an antidumping or countervailing duty determination. Paragraph 4(F) also clarifies that the U.S. Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction over any constitutional challenges to the binational panel system.

(5) *Liquidation of entries.*—Section 411(4)(G) makes conforming amendments to section 516A(g)(5) of the Tariff Act of 1930 to provide that, as under the CFTA Act, entries of merchandise covered by binational panel determinations shall be liquidated in a manner consistent with liquidation of entries subject to normal judicial review. Entries covered by such a determination that are entered prior to publication of a conflicting decision by a binational panel or extraordinary challenge committee shall be liquidated in accordance with the original determination. If the determination being reviewed by a panel is a determination in a section 751 review or a determination regarding the scope of an existing order, the Department of Commerce shall, upon request of an interested party who was a party to the proceeding and is a participant in the panel re-

view, order continued suspension of liquidation of some or all entries pending final disposition of the panel review. Such actions shall not be subject to judicial review.

(6) *Injunctive relief.*—Paragraph 4(H) of section 411 makes conforming amendments to section 516A(g)(6) of the Tariff Act of 1930 to provide that, as under the CFTA Act, the provision of section 516A(c)(2) relating to injunctive relief shall not apply.

(7) *Implementation of international obligations under Article 1904.*—Section 411(4)(I) makes conforming changes to section 516A(g)(7) of the Tariff Act of 1930, which provides that, in the case of remands by a binational panel or extraordinary challenge committee, the administering authority or the ITC shall take action not inconsistent with the panel or committee determination within the time frame specified in the remand.

(8) *Requests for binational panel review.*—Paragraphs 4(J) through 4(L) of section 411 make conforming amendments to section 516A(g)(8) of the Tariff Act of 1930 to provide that an interested party who was a party to an antidumping or countervailing duty proceeding may file a request for a binational panel review of the determination with the U.S. Secretary within 30 days after publication of the notice of the final determination or, in the case of class or kind rulings, receipt of the notice of the determination by the Government of the relevant NAFTA country. Receipt of such a request from an interested party by the U.S. Secretary shall be deemed a request for binational panel review. The party making the request must notify any other interested party and the Department of Commerce or ITC, as appropriate. The U.S. Secretary must notify interested parties and the Department of Commerce or ITC, as appropriate, if an interested party files a request for binational panel review with a NAFTA Government. Absent a request by an interested party, the U.S. Government cannot request binational panel review. Paragraph J also provides that the time for requesting binational panel review shall be suspended during the pendency of any stay issued pursuant to Article 1905(11)(b).

(9) *Representation in panel proceedings.*—Section 411(4)(M) makes conforming amendments to section 516A(g)(9) of the Tariff Act of 1930 to provide, as under the CFTA Act, that interested parties have the right to appear and be represented by their own counsel before the binational panel. The administering authority (currently the Department of Commerce) and the ITC will be represented by attorneys who are employees of those agencies.

(10) *Notification of class or kind rulings.*—Paragraph 4(N) of section 411 amends section 516A(g)(10) of the Tariff Act of 1930 to require the Department of Commerce, upon request, to inform any interested persons of the date on which the Government of the relevant NAFTA country received notice of a class or kind ruling.

(11) *Suspension of binational panel process and provisions for judicial review in case of such suspension.*—As noted above, NAFTA Article 1905 includes special provisions for safeguard-

ing the binational panel process if the application of the domestic law of a NAFTA country frustrates the binational panel system. If consultations fail to resolve the dispute, and if a special committee convened under Article 1905 finds that a NAFTA Party's domestic law has indeed frustrated the system, the complaining party may suspend the operation of the binational panel process. Section 411(4)(O) adds two new paragraphs—paragraphs 11 and 12—to section 516A(g) of the Tariff Act of 1930 to address this possibility, as well as the possibility that such suspension may eventually terminate.

New paragraph 11 authorizes the USTR to suspend the operation of the binational panel process in the event of an affirmative finding by a special committee established under Article 1905. It provides further that such suspension shall be terminated if a special committee is reconvened and finds that the problem has been corrected.

New paragraph 12 provides that if the binational panel process is suspended, any final antidumping or countervailing duty determination that is pending before a binational panel or an extraordinary challenge committee shall be transferred to the CIT if requested by an authorized person. Persons authorized to make such a request are described in subparagraph (C) of paragraph 12. In addition, if a binational panel review was completed fewer than 30 days before the binational panel process was suspended and an extraordinary challenge committee has not been requested, paragraph 12 also provides that the final determination that was the subject of the binational panel shall be transferred to the CIT. Paragraph 12 also acknowledges that, in some circumstances, a settlement with a NAFTA country of a dispute arising under Article 1905 may include, as part of its terms, judicial review of certain determinations. In such cases, paragraph 12 provides that any final determinations that are the subject of binational panel review or review by an extraordinary challenge committee will be transferred to the CIT if the terms of the settlement provide for judicial review with respect to such determinations. Finally, new paragraph 12 also requires that notice be published in the *Federal Register* if the United States or a NAFTA country has suspended the binational panel process.

Section 412: Conforming Amendments to Other Provisions of the Tariff Act of 1930

Section 412 makes conforming amendments to other provisions of the Tariff Act of 1930. Under section 502 of the Tariff Act of 1930, no ruling of the Secretary of the Treasury construing any law imposing customs duties shall be reversed or modified adversely to the United States, except in concurrence with an opinion of the Attorney General, a final CIT decision, or a final decision from a CFTA binational panel. Subsection (a) amends section 502 to include a reference to final decisions by NAFTA binational panels. This subsection also amends section 514 of the Tariff Act of 1930 to provide that Customs Service determinations made with respect to antidumping and countervailing duties are final and conclusive upon all persons unless a civil action contesting such a determina-

tion is filed in the CIT or binational panel review under the CFTA or the NAFTA is commenced.

Subsection (b) adds to the definitions in Title VII of the Tariff Act of 1930 (as set forth in section 771 of the Tariff Act of 1930) a definition of the term "NAFTA."

Subsection (c) amends section 777(f) of the Tariff Act of 1930 to include references to the NAFTA. Section 777(f) sets forth procedures for the protection of proprietary information. The amendments made by subsection (c) make it unlawful, as under the CFTA Act, for any person to violate any provision of a U.S. protective order or an undertaking with a NAFTA country to protect proprietary material. Any person who is found by the administering authority or the ITC (after notice and opportunity for a hearing) to have violated a provision of a protective order or undertaking shall be liable for a civil penalty of up to $100,000 for each violation and shall be subject to such other administrative sanctions (including disbarment from practice before the agency) as the administering authority or the ITC determines appropriate. Each day of a continuing violation constitutes a separate offense. The amendments made by subsection (c) also cover information provided in the course of extraordinary challenge proceedings.

In recognition of the fact that judges of the United States are subject to criminal proceedings for disclosure of confidential information (under 18 U.S.C. 1905), paragraph (8) of section 412(c) exempts Article III judges from civil sanctions for violations of protective orders when such judges serve as panelists or committee members in Chapter 19 proceedings. The Committee believes that the fact that criminal sanctions are available in such cases is sufficient to meet U.S. obligations under paragraph 8 of Annex 1901.2, which calls for appropriate sanctions in the event of violations of protective orders.

Section 413: Consequential Amendment to the CFTA Act

Section 410(a) of the CFTA Act authorizes the establishment of a working group to discuss with Canadian officials, for a period of seven years, a substitute system for rules for antidumping and countervailing duties. Section 413 provides that any time during which the NAFTA is in effect with respect to Canada will be disregarded in computing the seven years.

Section 414: Conforming Amendments to Title 28, United States Code

Section 414 adds references to the NAFTA to amendments to Title 28 that were originally made in the CFTA Act. These provisions: (1) ensure that the residual jurisdiction of the CIT cannot be used to circumvent the binational panel system; (2) prohibit U.S. courts from ordering declaratory relief in antidumping or countervailing duty proceedings involving merchandise from NAFTA countries; and (3) give the CIT exclusive jurisdiction over civil actions to enforce administrative sanctions imposed for violations of protective orders.

Section 415: Effect of Termination of NAFTA Country Status

Section 415 contains several transitional provisions for binational panel proceedings in the event that a NAFTA country ceases to be a NAFTA country. Subsection (a) provides that, on the date on which a country ceases to be a NAFTA country, the provisions of Title IV regarding the binational panel process and the amendments made by Title IV will cease to have effect with respect to that country.

Subsection (b) provides that if, at the time a country ceases to be a NAFTA country, proceedings are underway regarding the violation of a protective order, such proceedings shall continue and sanctions may be imposed. Subsection (b) also provides that determinations for which binational panel reviews or extraordinary challenge committee reviews are pending or have been requested will be reviewable under section 516A of the Tariff Act of 1930 if the involved country ceases to be a NAFTA country. In such cases, the time limit for requesting judicial review under section 516A will not begin to run until the date on which the NAFTA ceases to be in force with respect to that country.

Section 416: Effective Date

Under section 416, the provisions of Title IV are to take effect on the date the NAFTA enters into force for the United States. However, the new provisions will not apply to: any final antidumping or countervailing duty determinations published before that date; scope determinations, notice of which was given to the Canadian Government before that date; or binational panel reviews or extraordinary challenges begun before that date.

TITLE V—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE AND OTHER PROVISIONS

SUBTITLE A—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

Sections 501 through 506 of this bill amend the Trade Adjustment Assistance (TAA) statute to create a new subchapter D for a NAFTA-specific worker adjustment assistance program.

Estimates vary greatly concerning how many U.S. workers are likely to lose their jobs as a result of the NAFTA. However, even those studies that project significant net U.S. employment job gains from the NAFTA recognize that some American workers will lose their jobs as a result of either increased imports from Mexico or Canada or shifts in production to those countries. As the Congressional Budget Office (CBO) noted in a July 1993 study on the budgetary and economic effects of the NAFTA, these displaced workers are likely to be among the most vulnerable and may have greater than average difficulty in finding new employment.

This new NAFTA program is intended to ensure that those workers who are dislocated as a result of the NAFTA receive assistance that enables them to return to productive employment. By expanding eligibility to include those who lose their jobs as a result of shifts in production to Mexico or Canada, not only as a result of increased imports, the new program is designed to remedy what has been identified as one of the shortcomings of the current TAA

program. By combining TAA benefits (including income support payments for eligible workers, training, employment services, and job search and relocation allowances) with rapid response and other basic readjustment services available under other Department of Labor programs (which would be offered prior to final certification of eligibility for TAA benefits), it is intended to ensure that affected workers have the broadest possible menu of benefits and services available to them.

The Committee also notes that, as set out in the Statement of Administrative Action, the Department of Labor plans to provide assistance through other programs that it administers to workers in firms that are indirectly affected by the NAFTA. These include workers at "secondary" firms: those that supply firms that are directly affected by increased imports or shifts in production, or that assemble products made by such firms. The workers would not be eligible for TAA benefits. This is intended to respond to concerns that the eligibility criteria under the new Subchapter D program not serve as a reason for depriving other NAFTA-affected workers of various benefits.

Section 501: Short Title

Section 501 provides that Subtitle A may be cited as the "NAFTA Worker Security Act."

Section 502: Establishment of NAFTA Transitional Adjustment Assistance Program

Section 502 amends Chapter 2 of Title II of the Trade Act of 1974 to add a new Subchapter D establishing the NAFTA Transitional Adjustment Assistance Program. It provides that a group of workers shall be certified as eligible to apply for adjustment assistance under the new subchapter if the Secretary of Labor determines that a significant number or proportion of the workers in their firm (or its subdivision) have lost their jobs, or are threatened with such job loss, as a result of either (1) increased imports from Mexico or Canada of articles like or directly competitive with what their firm produces, or (2) a shift of production by their firm to Mexico or Canada of articles like or directly competitive with what their firm produces.

The first of these is the criterion used in the current TAA program. Like the current program, it must be coupled with a determination that the firm's sales or production have decreased in absolute terms and that the increase in imports contributed importantly to both the job loss and the decline in sales or production. The second expands upon current TAA eligibility to also reach workers who may be affected by production shifts as a result of the NAFTA.

Section 502 establishes that eligibility under the new program will be determined under a two-step process. Workers petition for certification of eligibility with the Governor of the State where the layoffs occurred. The Governor must make a preliminary finding regarding eligibility within 10 days of receiving the petition, and then transmit the petition and finding to the Secretary of Labor. If the Governor finds that the petition meets the eligibility criteria, the Governor shall ensure that the workers receive early readjust-

ment services, including job search and placement assistance and career counseling. The Secretary of Labor then must make a final decision on the petition within 30 days of receiving it from the Governor. If certified as eligible by the Secretary, workers are entitled to the full range of current TAA services and benefits.

To remain eligible for TAA income support benefits under section 502, workers must enroll in a training program by the later of (1) the end of the 16th week of their period for receiving unemployment compensation, or (2) the end of the sixth week after they are certified as eligible for TAA benefits by the Secretary of Labor. However, the Secretary may extend the deadline for enrolling in training programs in extenuating circumstances for up to 30 days (such as where training courses are cancelled abruptly, or where there is a delay in the first available date of enrollment).

The requirement that workers enroll in a training program to remain eligible for income support is intended to address concerns about excessive waivers of the training requirement under the current TAA program. The Committee is concerned about abuses of the waiver authority, which were described in a September 30, 1993 report of the Department of Labor's Office of Inspector General. The TAA statute requires workers to enroll in approved training programs as a condition for receiving income support—unless they are specifically granted waivers from the training requirement. It is the Committee's view that the intent of the law was that such waivers be granted sparingly, not routinely. However, among the groups of TAA participants studied in the Inspector General's report, those who did not wish to attend training almost always were granted waivers from training without losing their entitlement to income support payments.

The Committee, therefore, welcomes the explicit linkage between continued eligibility for income support benefits and enrollment in training by a date certain that is set forth in section 502. It urges the Department of Labor to seek through administrative means to limit the waivers granted under the TAA program to the circumstances originally intended.

At the same time, the Committee is concerned that this training requirement not cause undue hardship for workers who, through no fault of their own (such as where training courses are cancelled abruptly, or where there is a delay in the first available date of enrollment), cannot meet the above deadline for enrolling in a training program. By authorizing the Secretary of Labor to extend the deadline for up to 30 days in extenuating circumstances, section 502 is intended to provide the Secretary with a degree of flexibility in order to reduce the likelihood that such concerns would arise.

Section 503: Conforming Amendments

Section 503 makes several technical amendments to conform the new Subchapter D with provisions in the current TAA statute, and to clarify that no worker may receive assistance relating to the same layoff under both the current TAA program and the new program.

Section 504: Authorization of Appropriations

Section 504 authorizes appropriations to the Department of Labor, for fiscal years 1994 through 1998, of such sums as may be necessary to carry out the new Subchapter D.

Section 505: Termination of Transition Program

Section 505 provides that the new program is authorized through September 30, 1998 (the current expiration date of the TAA program), or until legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to that provided under the new Subchapter D becomes effective, whichever is earlier. If a worker is certified on or before the termination date as eligible to apply for assistance under the new program, that worker shall remain eligible beyond such date.

The Committee notes that the Administration has stated that it hopes to have a comprehensive worker adjustment assistance program in place by July 1, 1995. Section 505 ensures that the new program under Subchapter D will remain in effect until that program is established and, should that not occur, through the end of fiscal year 1998.

Section 506: Effective Date

Section 506(a) provides that the amendments made by sections 501 through 505 shall take effect on the date that the NAFTA enters into force for the United States.

Section 506(b) defines the workers who are covered by the new program. Workers can be certified as eligible for the benefits of the new program if they are laid off beginning on the date that the NAFTA enters into force. In addition, section 506(b)(2) provides a "reachback" for workers who lose their jobs between the date of enactment of this bill and the date of the NAFTA's entry into force; those workers also shall be eligible to receive the benefits of the new program. This ensures that if layoffs due to the NAFTA occur in the period between enactment of the bill and entry into force, the affected workers will be eligible for the benefits provided under Subchapter D.

Section 507: Treatment of Self-Employment Assistance Programs

Section 507 gives States the authority to establish self-employment assistance programs as part of the State unemployment compensation system. It allows States to pay a self-employment allowance in lieu of unemployment compensation to help unemployed workers while they are establishing businesses and becoming self-employed. The objective is to help expedite the transition of dislocated workers back into the work force.

Individuals are eligible for self-employment allowances if they are identified by a State worker profiling system as those who are likely to exhaust their regular 26 weeks of unemployment compensation; are participating in self-employment assistance activities, including entrepreneurial training, business counseling, and technical assistance; and are actively engaged on a full-time basis in activities relating to the establishment of a business and becoming self-employed.

The allowance payable to individuals who participate in a self-employment program is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions as regular unemployment compensation under the State law, except that State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable, and State requirements relating to disqualifying income are not applicable to income earned from self-employment.

The aggregate number of individuals receiving a self-employment allowance may not at any time exceed five percent of the number of individuals receiving regular unemployment compensation under the State law at such time. In addition, the program may not result in any cost to the Unemployment Trust Fund in excess of the cost that would be incurred by the State if the State had not participated in the self-employment program.

The authority for such programs will terminate five years after the NAFTA's enactment. Any State operating a self-employment program must report annually to the Secretary of Labor on the number of participants in the program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, and other information requested by the Secretary. The Secretary is required to report to Congress within four years of enactment of this bill on the operation of the program nationwide.

The Committee notes that, as indicated in the Statement of Administrative Action, providing States the authority to establish and operate these self-employment programs would benefit workers who may be dislocated as a result of the NAFTA. The traditional unemployment compensation system is designed mainly to provide income support for workers who are laid off temporarily or who expect to be unemployed for only a short period. Some workers, however, may lose their jobs permanently as a result of the NAFTA and will need additional tools—beyond basic income maintenance—in order to reenter the workforce. For some of these workers, access to a self-employment program may afford that opportunity.

SUBTITLE B—PROVISIONS RELATING TO PERFORMANCE UNDER THE AGREEMENT

Section 511: Discriminatory Taxes

Section 511 expresses the sense of the Congress that discriminatory enforcement of sales or other taxes by a State, province, or other governmental entity of a NAFTA country, so as to afford protection to domestic production or domestic services providers, is in violation of the NAFTA. When this adversely affects U.S. firms, the USTR should pursue all appropriate remedies to obtain removal of such discriminatory enforcement.

This provision reflects the Committee's concern about an 11 percent sales tax imposed by the Province of New Brunswick, which Canadian Customs began collecting at the Maine-New Brunswick border on July 1, 1993, on certain goods including alcoholic beverages and tobacco products. This tax, imposed on purchases made in the United States but not on those made in other Canadian

provinces, is the subject of formal USTR consultations with the Government of Canada.

Relationship between tax treaties and NAFTA.—Paragraph 2 of Article 2103 (Taxation) states that a tax convention, defined as a convention for the avoidance of double taxation or other international taxation agreement or arrangement, shall prevail to the extent of any inconsistency with NAFTA. The Committee understands that, in the case of parallel rights and obligations under a tax convention and NAFTA, only the tax convention's procedural provisions with respect to such rights and obligations shall be used and, thus, the tax convention, subject to certain provisions and understandings described below, will prevail.

As provided in paragraph 3, there are two exceptions to the primacy of a right under a tax convention or agreement: Article 301 (Market Access—National Treatment) and such other provisions as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT; and Article 314 (Market Access—Export Taxes) and Article 604 (Energy—Export Taxes) shall apply to taxation measures. In addition, paragraph 6 of Article 2103 provides that Article 1110 (Expropriation and Compensation) shall apply to taxation measures subject to certain procedural rules.

The Committee understands that, with respect to rights and obligations not subject to a tax convention, those rights and obligations may be subject to NAFTA to the extent provided for in Article 2103. For example, the provisions of a tax convention requiring nondiscriminatory treatment may not address certain aspects of discrimination against foreign service providers resulting from a Party's grant of tax relief or reduction in income tax to consumers of that service. To the extent that such discrimination is not addressed in a tax convention, such discrimination may be subject to the provisions of NAFTA to the extent provided for in paragraph 4, which imposes certain national treatment and MFN requirements on taxation measures in certain cases.

Similarly, none of the provisions of tax conventions between Canada and the other NAFTA parties deal with taxes imposed by states, provinces, or local authorities. Thus under a tax convention between Canada and another NAFTA party, a property tax imposed by a province of Canada or a state of the United States of America or of Mexico would be subject to the national treatment obligation under Chapter 11 of NAFTA (Investment) if the tax was neither permitted under a "grandfather clause" nor allowed as an "equitable and effective imposition or collection of taxes" under paragraph 4(g) of Article 2103.

The Committee understands that rights or obligations in respect of a tax must be addressed by the terms of the tax convention if the tax convention is to prevail over NAFTA in accordance with paragraph 2. Examples of such provisions include business profits, dividend, interest, royalty, capital gains and other income provisions; provisions concerning dependent or independent services; and nondiscriminatory treatment provisions. Other examples are the provisions in present or proposed U.S. tax conventions with the other NAFTA Parties that allow a Party to tax its citizens and residents. A further example is a provision in the proposed U.S. tax

convention with Mexico limiting the benefits of the convention to qualified residents of the treaty parties. Under such a limitation on benefits provision, for example, the right of a party to a tax convention to impose tax on a royalty arising in that party and paid to a resident of the other party is addressed by the convention and therefore is not subject to NAFTA, even in a case in which the resident of the other party is not entitled to the benefits of the convention under a limitation on benefits provision. In addition, pursuant to the provisions of the U.S. tax conventions with the other NAFTA Parties, either party to the tax convention is permitted to impose a branch profits tax. Similarly, the nondiscrimination provisions of Canada's tax conventions with the other NAFTA Parties state that corporations controlled by residents of the other party to the tax convention will receive treatment no less favorable than corporations controlled by residents of a third party; thus, either party to those tax conventions may implement special measures with respect to taxation or any requirement connected thereto applicable to corporations controlled by its own residents.

Under the terms of tax conventions between NAFTA countries, the competent authorities of the Parties are to resolve by mutual agreement any difficulties or uncertainty with respect to the interpretation or application of the tax conventions. Therefore, the Committee understands that the competent authorities designated by the terms of the tax conventions shall determine whether the tax convention is to prevail over NAFTA in accordance with paragraph 2.

The Committee intends that the competent authorities shall consult and determine whether the tax convention prevails in accordance with paragraph 2. With regard to taxes on income, capital gains or taxable capital of corporations, taxes on estates, inheritances, gifts and generation-skipping transfers and the asset tax under the Asset Tax Law ("Ley del Impuesto al Activo") of Mexico listed in paragraph 1 of Annex 2103.4 (other than measures subject to Article 2103(3)), the Committee understands that procedures may be initiated under NAFTA Article 2007 only if the consulting competent authorities agree that, with respect to the measure, the tax convention does not prevail over the NAFTA in accordance with paragraph 2 of Article 2103. With regard to other taxes, if, within three months after the issue of whether the tax convention prevails is brought to the attention of the competent authorities, the consulting competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree within six additional months whether the tax convention prevails over NAFTA, the Committee anticipates that procedures may be instituted under NAFTA Article 2007. The Committee understands that the time periods set out above may be altered in any particular case by mutual agreement of the consulting competent authorities.

National treatment with respect to cross-border trade in services, and financial services.—Subject to certain exceptions, Article 2103 provides that Article 1202 (Cross-Border Trade In Services—National Treatment) and Article 1405 (Financial Services—National Treatment) apply to taxation measures on income, capital gains or the taxable capital of corporations, and to the asset tax under the Asset Tax Law of Mexico, that relate to the purchase or consump-

tion of particular services. With regard to Article 1405, the Committee wishes to clarify that it intends only the national treatment requirements of paragraph 3 of Article 1405 (relating to the treatment of cross-border financial service provisions of another Party) to apply to such taxation measures.

One exception to the application of these national treatment requirements to taxation measures concerns any new taxation measure aimed at ensuring the equitable and effective imposition or collection of taxes and that does not arbitrarily discriminate between persons, goods or services of the parties or arbitrarily nullify or impair benefits accorded those Articles, in the sense of Annex 2004. The Committee understands that measures which may be adopted by a Party that are directed at tax avoidance or abuse with respect to taxes described above levied by that Party will be considered to be taxation measures imposed in accordance with the exception described above. These measures include, for example, provisions relating to the proper characterization of payments between related parties and provisions for the determination of income and expenses in transactions between related parties. Further, in accordance with the exception described above, the Committee understands that a Party may condition the receipt, or continued receipt, of an advantage relating the contributions to, or income of, pension trusts or pension plans to a requirement that said Party maintain continuous jurisdiction over the pension trust or pension plan.

Further, the Committee understands that the requirements of national treatment described above shall not be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory.

Section 512: Review of the Operation and Effects of the NAFTA

Section 512 requires the President, no later than July 1, 1997, to submit to the Congress a comprehensive study of the NAFTA's operation and effects. The study shall assess the extent of economic effects from the NAFTA, including on U.S. Gross National Product, trade and current account balances, and employment, as well as on the industries (including agriculture) that have experienced significant increases in either exports or imports as a result of the NAFTA. It shall also examine the NAFTA's impact on investment in U.S. production, including the extent to which such investment has been redirected to Mexico as a result of the NAFTA. Finally, it shall examine the extent to which the NAFTA has contributed to improvements in Mexican wages and working conditions, Mexican enforcement of labor and environmental laws, and the reduction in pollution along the U.S.-Mexico border.

The study shall attempt to distinguish between the NAFTA's effects and events that likely would have occurred without the NAFTA, and shall evaluate the effects relative to aggregate economic changes and the effects of factors such as international competition, reduced defense spending, the shift from "traditional manufacturing" to other economic activity, and the federal debt burden. This is intended to segregate the effects of the NAFTA on U.S. growth, trade, investment, employment, and productivity from other global and national economic factors.

Section 513: Actions Affecting U.S. Cultural Industries

Article 2106 of the NAFTA, which carries forward Article 2005 of the CFTA, makes clear that should Canada take measures to discriminate against or restrict market access for U.S. "cultural industries" (including motion pictures, television, sound recordings, and print publications), the United States retains the right to respond aggressively with measures of "equivalent commercial effect."

Section 513 amends the Trade Act of 1974 to add a new section 182(f) to that statute. It provides that by no later than 30 days after submission to Congress of the annual National Trade Estimates report, USTR shall identify any act, policy, or practice of Canada adopted or expanded after December 17, 1992 affecting cultural industries (as defined in the provision), and which is actionable under Article 2106 of the NAFTA. Any act, policy, or practice so identified should be treated, for purposes of section 301, as the basis for Canada's identification under the "Special 301" law (section 182 of the Trade Act of 1974, as added by the Omnibus Trade and Competitiveness Act of 1988) as a "priority foreign country"—unless the United States has already taken action under Article 2106 in response to it. In determining whether to make such an identification, USTR shall consult with and take into account the views of the relevant U.S. industries, appropriate advisory committees, and appropriate Federal Government officials.

The Committee has had longstanding concerns about the practices of other countries affecting U.S. cultural industries, and about Canada's ability to exempt its cultural industries from coverage under the CFTA. Section 513 confirms that the United States is prepared to respond under Article 2106 to Canadian actions affecting these important U.S. industries. It also reflects the view of the Committee that Article 2106 of the NAFTA neither enlarges nor diminishes the rights and obligations of the United States and Canada under the CFTA, and that, consistent with the NAFTA, measures of "equivalent commercial effect" may be taken under U.S. trade laws (including both the new section 182(f) and section 301 of the Trade Act of 1974) should Canada act under Article 2106. Such measures could include those in areas covered by the NAFTA—such as services, intellectual property, investment, government procurement, and rules of origin—that were not covered by provisions of the CFTA.

Section 514: Report on Impact of NAFTA on Motor Vehicle Exports to Mexico

Section 514 requires USTR to report annually, for five years, on the effectiveness of the NAFTA's automotive trade provisions in expanding exports of U.S. motor vehicles and motor vehicle parts to Mexico.

Section 514(a) sets forth the findings of the Congress that automotive trade is one of the most restricted areas of trade between the United States and Mexico; the NAFTA's elimination over 10 years of Mexican barriers to such trade should increase substantially U.S. automotive exports; and that this expectation of the NAFTA's effects is consistent with recent estimates by the Department of Commerce (concerning the value of additional exports of

vehicles and parts) and the U.S. auto industry (concerning the volume of additional vehicle exports).

Section 514(b) requires the USTR, beginning July 1, 1995 and annually thereafter through July 1999, to report to the Committees on Finance and Ways and Means on the effectiveness of the NAFTA's automotive trade provisions. These annual reports shall include information on current bilateral automotive trade levels and patterns; remaining barriers; the amount U.S. exports to Mexico have increased over the previous year; whether such increases meet the anticipated levels of new exports; and, if not, what actions the USTR is prepared to take (including, but not limited to, possible future negotiations with Mexico for the purpose of modifying the automotive provisions in the NAFTA) to realize the expected benefits.

The Committee anticipates that these reports will enable it to better evaluate whether the NAFTA, by gradually eliminating the significant current Mexican trade and investment barriers in the automotive sector, creates the benefits for U.S. motor vehicle and motor vehicle parts producers that both the Administration and the domestic industry have stated they expect.

Section 515: Center for the Study of Western Hemispheric Trade

Section 515 directs the Commissioner of Customs, after consultation with appropriate officials in Texas, to make grants to an institution (or a consortium of institutions) to assist in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade in Texas. It sets forth selection criteria; identifies the Center's programs and activities; requires an annual report by the Commissioner to the Committees on Finance and Ways and Means on operations of the Center; and authorizes appropriations of $10 million for fiscal year 1994 and such sums as may be necessary in the three succeeding fiscal years. The Center's activities will include examining the NAFTA's effects on Western Hemisphere economies, and the negotiation of future trade agreements (including possible accessions to the NAFTA).

Section 516: Effective Date

Sections 511 through 514 shall take effect on the date the NAFTA enters into force for the United States. Section 515 shall take effect on the date of enactment of the implementing bill.

SUBTITLE C—FUNDING

Section 521: Fees for Certain Customs Services

Section 521 amends section 13031 of the COBRA to increase temporarily from $5.00 to $6.50 Customs user fees charged on passengers arriving in the United States from abroad on commercial vessels or aircraft. Section 521 also temporarily lifts the current exemption for passengers arriving from Mexico, Canada, Caribbean nations, and U.S. territories (other than Puerto Rico). Both changes are effective from the date of entry into force of the NAFTA through September 30, 1997. These increased user fee revenues will be dedicated, subject to appropriation, only to cover the costs

of Customs inspections services that are not covered by the current user fee.

Finally, section 521 extends the Customs passenger processing and conveyance fees and the Customs merchandise processing fees, currently set to expire on September 30, 1998, through September 30, 2003.

Section 522: Authority To Disclose Return Information to the Customs Service

Section 522 amends section 6103 of the Internal Revenue Code, which prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Code. Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). In addition, no tax information may be furnished by the Internal Revenue Service to another agency unless the other agency establishes procedures satisfactory to the Internal Revenue Service for safeguarding the tax information it receives (sec. 6103(p)).

Under present law, the Customs Service, an agency within the Department of the Treasury, does not have access to tax information from the Internal Revenue Service for use in its civil investigations. The Customs Service may demand documentation from an importer to support the claimed value and has access to the importer's books and records. For fulfillment of the documentation requirement, the Customs Service may ask importers to disclose tax information voluntarily.

Under present law, importers subject to U.S. tax may not claim a transfer price for U.S. income tax purposes that is higher than would be consistent with the value they claim for customs purposes (sec. 1059A).

The Customs Service annually collects approximately $20 billion in duties, taxes, and fees from importers and international travelers. In almost all cases, the amount owed to the Customs Service is a percentage of the value of imported goods. While importers must disclose to the Customs Service the value of imported goods at the time the goods enter the United States, it is the Customs Service's responsibility to determine whether these claimed values are correct. The Customs Service currently conducts approximately 200 major import audits annually. In some cases, importers have voluntarily provided tax information to the Customs Service. The Customs Service, however, receives no voluntary tax information in about three-fourths of its 200 annual audits.

Section 522 permits the Secretary of the Treasury (or his delegate), upon written request from the Commissioner of Customs, to disclose return information solely for the purpose of, and only to the extent necessary in, (1) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930, or (2) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits. Disclosure would be made to officers and employees of the Department of the Treasury. Disclosure of return information would be permitted with respect to taxes imposed by

Chapters 1 and 6. Accordingly, the provision generally would authorize the Secretary to disclose to the Customs Service, pursuant to regulations, those items of return information relevant and necessary to ascertain the correctness of declared values, and generally would allow the Customs Service to use this information in its audits of reported values and in certain actions resulting from such audits.

The bill contemplates neither disclosures of return information to the extent such disclosures would be inconsistent with a treaty or executive agreement to which the United States is a party nor disclosures of Advance Pricing Agreements (APA) (including any related information submitted or generated (except otherwise disclosable return information)). Under the APA program, companies and the Internal Revenue Service negotiate a pricing methodology for transactions between related entities. The effectiveness of the APA program relies on voluntary disclosure of sensitive information to the Internal Revenue Service; accordingly, information submitted or generated in the APA negotiating process should remain confidential.

Section 522 is effective on the date the NAFTA enters into force with respect to the United States. Not later than 90 days after the date of enactment, the Secretary of the Treasury or his delegate must issue temporary regulations to carry out this provision.

Section 523: Use of Electronic Fund Transfer System for Collection of Certain Taxes

Employers presently are required to withhold income taxes and FICA taxes from wages paid to their employees. Employers also are liable for their portion of FICA taxes, excise taxes, and estimated payments of their corporate income tax liability. At present, they must deposit these taxes in a government depository (generally, a commercial bank or savings institution) within a period of time specified in Treasury regulations. Each deposit must be accompanied by a Federal tax deposit ("FTD") coupon, which supplies such information as the taxpayer's name, identification number, tax period, and type of tax. Depositories process the FTD coupon information and forward it to the IRS. Though taxpayers' accounts are debited for the deposited taxes on the date deposited, the amounts are generally not credited to the account of the Treasury until the following day.

The present FTD coupon system and use of Government depositories is paperwork-intensive. Phasing in a new electronic fund transfer system will significantly reduce paperwork and will result in greater accuracy. Technological advances in the electronic fund transfer process will permit businesses to utilize the electronic fund transfer system without needing to purchase new computers or equipment. Electronic fund transfers already occur throughout the economy and account for 55 percent of payments made to social security recipients and 84 percent of the Federal payroll. Most businesses currently utilize this system for some of their payments. Use of an electronic fund transfer system for the collection of tax will promote accuracy and efficiency in processing, and consequently, is expected to result in significant cost savings to the Government. Taxpayers will benefit from increased accuracy, re-

duction in paperwork burden, and availability of a user-friendly tax collection system.

Section 523 requires the development and implementation of a new system that uses electronic fund transfer ("EFT") to remit certain taxes and convey FTD coupon information directly to the Treasury. The new system must be designed by the Treasury to operate in such a manner as to ensure that these taxes are credited to the general account of the Treasury on the date on which such taxes would otherwise have been required to be deposited under the FTD system. The use of the EFT system thus would eliminate the paperwork burden inherent in the paper-based FTD system, the one-day delay in crediting tax funds to the Treasury, and the requirement that depositories function as FTD information processors. The taxes involved are: income taxes withheld from employees, the employer and employee portions of FICA taxes (both HI and OASDI), excise taxes, and corporate estimated tax payments.

To provide an orderly transition from the present-law FTD system to the new EFT system, the new system is phased in over a period of years. It is phased in by increasing each year the percentage of total taxes subject to the new EFT system. In the first year, three percent of the total taxes are required to be made by electronic fund transfer, increasing to 58.3 percent (60 percent for excise taxes and corporate estimated tax payments) for the fourth and fifth years, and increasing to 94 percent in the following years. The specific implementation method required to achieve the target percentages is to be set forth in Treasury regulations. It is anticipated that the phase-in will begin with the largest employers. It is also anticipated that small employers and other taxpayers for whom this system would prove unduly burdensome or impractical will be offered alternatives to or exemptions from the Treasury regulations.

Since one of the main goals of the provision is to reduce the paperwork burden on U.S. businesses, the Committee strongly encourages the Secretary to consider carefully the impact on small businesses of the anticipated regulations. The Committee intends that the regulations not create hardships for small businesses; the Committee generally intends that no small business would be required to purchase computers or would need access to any electronic equipment other than a touch-tone telephone. The provision grants the Secretary considerable flexibility in drafting the regulations, and the Committee urges the Secretary to take into account the specific needs of small employers, including possible exemptions for the very smallest businesses from the new electronic fund transfer system.

Section 523 takes effect on the date the NAFTA enters into force with respect to the United States. Not later than 210 days after the date of enactment, the Secretary of the Treasury (or his delegate) must issue temporary regulations to implement this provision. Those initial regulations must contain sufficient guidance to implement the provision for at least the first year it is effective. The Secretary may promulgate additional regulations at a later date to implement the provision for subsequent years. It is anticipated that any subsequent regulations will be issued sufficiently far in ad-

vance so as to give taxpayers adequate notice of their responsibilities under the provision.

TITLE VI—CUSTOMS MODERNIZATION

The Customs Service will bear the chief responsibility for implementing and enforcing the provisions of the NAFTA. In addition to implementing the tariff phase-out schedule for thousands of products, as set forth in Annex 302.2, the Customs Service will also be tasked with monitoring and verifying compliance with each of the product-specific rules of origin found in Annex 401, as well as compliance with the general rules of origin provided for in Chapter 4. NAFTA Article 303 imposes significant limitations on duty drawback to help achieve the NAFTA's goal of creating a more integrated North American market. The Customs Service will be the agency tasked with ensuring compliance with the duty drawback rules. The Customs Service will also be required to review and evaluate the Certificates of Origin that are required under Chapter 5 for goods for which NAFTA tariff preferences are sought. NAFTA Articles 502 and 504 set forth obligations relating to importations from NAFTA countries and exportations to NAFTA countries; again, the Customs Service is the agency charged with ensuring that these obligations are met. Under Article 509, the Customs Service will be required to provide advance rulings regarding compliance with the NAFTA rules of origin and the country of origin marking requirements found in Annex 311, as well as general eligibility for preferential treatment under Annex 302.2. And it will be the Customs Service that will assess the penalties required under Article 508 for noncompliance with the provisions of Chapters 3, 4, and 5 of NAFTA.

Apart from these provisions, the Customs Service will be required to ensure compliance with the NAFTA rules governing trade in agricultural goods (Section A of Chapter 7), as well as border compliance with U.S. laws and regulations implementing sanitary and phytosanitary measures. The increased responsibilities that the Customs Service will bear as a result of these specific NAFTA provisions must be evaluated in the context of increasing day-to-day responsibilities generally, due to the anticipated growth not only in U.S.-Mexican trade, but in global trade. The Customs Service will be required to carry out these additional responsibilities with fewer resources, as the agency implements measures to cut costs.

Title VI, the Customs Modernization Act, will significantly enhance the ability of the Customs Service to implement and enforce the NAFTA by increasing the agency's efficiency and productivity. Title VI accomplishes this goal by removing archaic statutory provisions requiring paper documentation and providing the full authority, under the National Customs Automation Program, for automated customs transactions. In return for facilitating the entry of merchandise through automation, Title VI contains a number of provisions to improve compliance with the customs laws, chiefly through penalties for failure to provide accurate information, including with respect to drawback claims, and for failure to keep the records that the Customs Service will require to audit or review entries of merchandise after they have been cleared and verify com-

pliance with the NAFTA. Title VI also implements the concept of "informed compliance," which is premised on the belief that importers have a right to be informed about customs rules and regulations, as well as interpretive rulings, and to expect certainty that the Customs Service will not unilaterally change the rules without providing importers proper notice and an opportunity for comment. The Committee believes that these provisions, too, will improve compliance with the customs laws in general, as well as with the numerous rules and regulations that are specific to the NAFTA. Finally, Title VI includes a number of administrative modifications aimed at streamlining the agency's operations and improving the productivity of the Service. Taken together, the Committee strongly believes that the provisions of Title VI will assist the Customs Service in administering and enforcing the provisions of the NAFTA, as well as equipping the Service with the tools necessary to enforce effectively U.S. trade and customs laws in general, while facilitating imports from NAFTA countries and other trading partners.

Section 601: Reference

Section 601 provides that references in Subtitles A, B, or C to an amendment to, or repeal of, a part, section, subsection, or other provision, are references to a part, section, subsection, or other provision of the Tariff Act of 1930.

SUBTITLE A—IMPROVEMENTS IN CUSTOMS ENFORCEMENT

Section 611: Penalties for Violations of Arrival, Reporting, Entry, and Clearance Requirements

Section 436 of the Tariff Act of 1930 provides civil and criminal penalties for violating the provisions of that Act concerning the report of arrival of vessels, vehicles, and aircraft. These violations include the presentation of forged or altered documents. In order to bring uniformity to the penalty provisions that apply to the arrival, entry, clearance, and manifest laws, section 611 amends the law to provide penalties for violation of the arrival, entry, clearance, and manifest requirements consistent with the provisions of section 331(a) of the Anti-Drug Abuse Act of 1986 (Public Law 99-570; 100 Stat. 3207-81). Recognizing the use of electronic means of communications, section 611 also extends current penalties for presenting false or altered data or manifests to the electronic transmittal of such information.

Section 612: Failure to Declare

Section 497 of the Tariff Act of 1930 provides for forfeiture and penalties for the failure to declare articles. If the article is a controlled substance, the current penalty is 1,000 percent of the value of the article. In order to ensure an adequate penalty for the importation of even a small amount of a controlled substance, section 612 establishes a minimum $500 penalty for the importation of controlled substances. Under this section, the penalty will be the greater of $500 or an amount equal to 1,000 percent of the value of the article. Section 612 also extends current penalties for failure to declare to electronic transmittal of entries and declarations.

Section 613: Customs Testing Laboratories; Detention of Merchandise

Section 499 of the Tariff Act of 1930 authorizes the Customs Service to conduct examinations and detain imported merchandise. Under the statute, not less than one package of every invoice and not less than one package of every 10 packages of merchandise shall be examined unless it is determined that a lesser number of packages can be examined. If there is evidence of fraud, the statute permits seizure of the merchandise. If there is no evidence of fraud, the value of an article omitted on the entry shall be added and the duties paid on that article. Current law also describes the circumstances under which the appraisement of merchandise shall not be held to be invalid.

Section 613 is intended to bring the law into conformity with existing Customs Service practice regarding the examination of merchandise by removing obsolete examination requirements. The bill requires the Customs Service to: (1) designate the packages or quantities of merchandise covered by an entry that are to be opened; and (2) order that such packages or quantities, and any additional packages or quantities that may be necessary, be sent to a designated examination site. This section requires the Customs Service to inspect a sufficient number of shipments and examine a sufficient number of entries to ensure compliance with the customs laws. Section 613 provides that any articles fraudulently omitted from an entry or invoice are subject to seizure, and that duties, fees and taxes must be paid on any articles that were omitted from an invoice or entry without fraudulent intent. It is the Committee's intent that, to ensure that adequate information is available to Customs Service officials responsible for conducting examinations, any required entry or manifest information that has been filed with the Customs Service, whether electronically or in paper form, be available to the appropriate official in the port of examination. It is the Committee's intent that the absence of any required entry or manifest information does not preclude or limit in any way the authority of the Customs Service to examine merchandise.

This section is also intended to codify Customs Service regulations and administrative guidelines concerning the use of commercial laboratories and gaugers. Section 613 authorizes the Customs Service to establish procedures for the accreditation of commercial laboratories and the approval of commercial gaugers, and for the suspension and revocation of accreditation or approvals, but such procedures will apply only when the determination of admissibility, quantity, or composition of imported merchandise is vested in or delegated to the Customs Service. Although the bill authorizes the Customs Service to impose a reasonable charge for accreditation or reaccreditation, it is the Committee's intent that these fees be equivalent to the costs incurred by the agency in performing such accreditation and reaccreditation. Section 613 provides that laboratories and gaugers that are currently accredited under Customs Service regulations will not be required to reapply, but will be subject to reaccreditation. This section also creates appeal rights for commercial laboratories and gaugers to challenge in the CIT any order or decision relating to their accreditation or reaccreditation or the assessment of a penalty within 60 days of its issuance. Sec-

tion 613 provides that in the absence of Customs testing, the Customs Service shall accept quantity and analysis results from the laboratories and gaugers it accredits, but does not limit or preclude it or any other Federal agency from independently testing, analyzing, or quantifying any merchandise.

With respect to the suspension or revocation of accreditation, section 613 requires the Secretary of the Treasury to prescribe regulations regarding the conditions under which the Customs Service may suspend or revoke accreditation or impose monetary penalties. This section provides that, notwithstanding the provisions of section 592(d) of the Tariff Act of 1930, penalties may be assessed, but any monetary penalties may not exceed $100,000 and shall be in addition to recoveries of any actual or potential loss of revenue that may have resulted from an intentionally falsified report or analysis submitted by an accredited laboratory or gauger in collusion with the importer. It is the Committee's understanding that the Customs Service, within a reasonable period of time following enactment of this legislation, will publish guidelines governing penalties and any mitigating factors that it will consider in imposing any such penalties. The Committee expects that such guidelines will take into account the severity of the violation and the frequency of violations. As the statute provides, penalties are not to be assessed in cases of good faith differences of professional opinion.

This section also provides that testing procedures and methodologies will, unless developed by the Customs Service for enforcement purposes or proprietary to the holder of a copyright or patent, be made available upon request to laboratories, importers or their agents, and any others in the trade community expected to make use of such procedures or methodologies in connection with their import activities. It is the Committee's intent that the phrase "testing procedures and methodologies . . . developed by the Customs Service for enforcement purposes" be interpreted to mean only those circumstances where the revelation of such procedures or methodologies would be expected to materially aid an importer in potentially circumventing customs laws or regulations. Test results will be made available on request to the importer or its agents, unless they are proprietary to the holder of a copyright or patent or reveal information developed by the Customs Service for enforcement purposes. It is the Committee's intent that, where information relating to analytical methods and results can be provided, such information shall include data and other information supportive of laboratory results, in addition to the final laboratory report.

This section also sets forth procedures regarding the detention of merchandise by the Customs Service. These procedures compel the Customs Service to make a decision to release or detain merchandise within five working days after presentation of the merchandise for examination. The bill requires the agency to notify the importer of any detention within five working days. The Customs Service must provide copies of any Customs' testing results and a description of the analytical procedures and methodologies employed to any party having an interest in detained merchandise unless such disclosure reveals testing procedures and methodologies that are proprietary to the holder of a patent or copyright or are developed by the Customs Service for enforcement purposes.

Section 613 provides for expedited administrative and judicial review of detentions. Under this provision, the failure to make an admissibility decision concerning detained merchandise within 30 days after the merchandise has been presented for examination will qualify as a decision to exclude for purposes of the protest law (section 514 of the Tariff Act of 1930). If the protest is denied, the challenging party may institute suit in the CIT. During judicial review of a detention, the Customs Service has, notwithstanding 28 U.S.C. 2639, the burden of proof in demonstrating that it has good cause for not reaching an admissibility decision. However, the burden remains with the complainant, in accordance with 28 U.S.C. 2639, if a suit is commenced after a decision on admissibility has been reached. If the CIT determines that the Customs Service has not met its burden of showing good cause for not reaching an admissibility decision, it shall order the appropriate relief, which may include an order to release the merchandise. Once an action has commenced in the CIT, the Customs Service shall immediately notify the Court if a decision to release, exclude, or seize has been reached.

With respect to the "good cause" burden placed on the Customs Service relating to the admissibility decision, it is the Committee's intent that this burden may be satisfied by a showing that another Federal agency with jurisdiction over an admissibility decision has not yet reached the required determination.

The Committee understands that the Customs Service frequently detains merchandise on behalf of other agencies, including the Food and Drug Administration and the Department of Agriculture, and is not directly involved in the activities that result in an admissibility decision. The procedure provided in this section for recourse to the CIT is intended to apply only to admissibility determinations for which the Customs Service is responsible. The bill is not intended to change any existing procedures or relationships between the Customs Service and any other Federal agency.

Section 614: Recordkeeping

Section 508 of the Tariff Act of 1930 provides that any owner, importer, consignee, or agent must make, keep and render for examination and inspection records pertaining to any importation. Section 508(c) provides that records be maintained for a period not to exceed five years from the date of entry. Section 508(e) states that any person who fails to retain records of exports to Canada (as required under subsection (b)) shall be liable to a civil penalty not to exceed $10,000.

Section 614 imposes the recordkeeping requirements on parties whose activities require filing an entry or declaration, parties transporting or storing merchandise carried or held under bond, parties who file drawback claims, and parties who cause an importation or the transportation or storage of merchandise held under bond. This section also provides that information and data maintained in the form of electronically generated or machine readable data are "records" for purposes of the statute's recordkeeping requirements. Finally, section 614 provides that records pertaining to drawback claims shall be kept for three years from the date the claim is paid; all other records required to be kept by this section,

including those pertaining to exportations to Canada, shall be retained for five years from the date of importation or exportation (to Canada), as appropriate. Section 205 of the implementing bill makes further changes to section 508 of the Tariff Act of 1930 to make the recordkeeping requirements applicable to exportations to NAFTA countries.

The Committee's amendments are intended to clarify recordkeeping requirements for the importing community, close existing loopholes and provide statutory recognition of electronically transmitted records. The Committee intends that the recordkeeping requirements and the examination authority of the Customs Service shall apply only to those records specifically identified in the statute.

Section 615: Examination of Books and Witnesses

Section 509(a)(1) of the Tariff Act of 1930 provides authority for the examination of records and witnesses. Section 509(a)(2) provides the authority to summon: an importer, or officer, employee, or agent of the importer; any person having possession, custody, or care of related records; or any other person; and to require the production of the records. Section 1509(c) defines the terms "records," "summons," and "third-party recordkeeper," and sets forth special procedures for third-party summonses.

Section 615 of this bill amends section 509(a) by providing that records maintained in the form of electronically generated or machine readable data fall within the purview of the statute, and that records required for the entry of merchandise, whether or not the Customs Service waived their presentation at entry, shall be produced for Service examination within a reasonable time after demand for their production, taking into account the number, type, and age of the item demanded. This section also requires that the Customs Service identify and publish in the "Customs Bulletin" a list of the records that are required for the entry of merchandise. The Committee intends that the list be published as soon as possible after the enactment of this legislation. Such records include, but are not limited to, commercial invoices, packing lists, certificates of origin, Form A, declarations of a foreign manufacturer, and any specific documents or other agency forms required pursuant to regulation for the admissibility into the United States of particular merchandise. The Committee intends that the Customs Service publish regulations in connection with this requirement at a later date. Once this list has been made public and importers have had an opportunity to familiarize themselves with the contents, the Committee expects that the person on whom a demand is made for the production of any of the records identified in the statute will furnish them within the "reasonable time" standard stipulated in the law. Failure to comply with a demand for the production of records required for the entry of merchandise may subject the noncomplying party to an administrative penalty. The Committee believes that the statute is relatively clear on how such factors as the number, type, and age of the items demanded will affect the obligation to produce. For example, a single request for a one-page document associated with a six-month old entry should be produced within a matter of days, whereas the production of 50 commercial

invoices relating to 50 entries that were filed two years before the documents were requested will take longer to produce—as long as two to four weeks, depending on whether the records had to be retrieved from storage and the method of storage involved. The Committee believes that the Customs Service and the importing community should be able to develop production schedules that do not adversely affect the day-to-day operations of the business while permitting the agency to verify in a timely manner the accuracy of information relating to import transactions.

This section also establishes procedures for conducting regulatory audits. These procedures require advance notification, entry and closing conferences, and preparation of a written audit report within 90 days following the closing conference. Section 615 requires that a copy of the audit report, subject to any applicable exemption from disclosure provided in the Freedom of Information Act (5 U.S.C. 552), be sent to the audited party within 30 days of completion, unless a formal investigation has been commenced. It is the Committee's intention that, in an era of "informed compliance," the Customs Service will make expanded use of its Regulatory Audit program. At the same time, the safeguards included in the implementing bill should enhance the value of the regulatory audit program in ensuring compliance with applicable laws and regulations. The bill makes clear that the Customs Service will not be required to hold a closing conference or complete and furnish a written audit report if a formal investigation is commenced. The Committee urges the Customs Service , however, to provide notice of the opening of a formal investigation as soon as possible, particularly where there is sufficient cause to believe that any required records would not be rendered unavailable or destroyed.

The Committee intends that the written audit reports will provide sufficient information and be of such quality as to further the "informed compliance" goals of this bill. The Committee further intends that any exemptions under the Freedom of Information Act be used judiciously and in a manner consistent with the "informed compliance" objective. If a Customs Service auditor believes, during a routine audit, that recordkeeping deficiencies exist, the Committee expects the auditor to point out any such deficiencies to the audited party. Where matters are more properly characterized as involving tariff classifications, valuation, or interpretations of law, the Committee expects such matters will be brought to the attention of the Customs Service official with the appropriate expertise.

Section 615 also establishes a new "Recordkeeping Compliance Program." The Customs Service shall establish this program, on a voluntary basis, after consulting with the importing community. Recordkeepers who are certified by the Customs Service may participate in the program or establish an alternative program suited to their and the Service's particular needs, if they can show, among other things, that they comprehend the legal recordkeeping requirements, have adopted procedures for explaining recordkeeping requirements to employees, have adopted procedures for the preparation, maintenance and production of required records, have designated an individual or individuals to be responsible for compliance with the recordkeeping program, have adopted procedures approved by the Customs Service for the maintenance of original

records or alternative records, and have adopted procedures for notifying the Customs Service of variances to, or violations of, the recordkeeping compliance program, and for taking corrective action when notified by the Customs Service of violations or problems regarding the program. The Customs Service shall take into account the size and nature and volume of imports of an importing business when deciding to certify its program.

This section also provides for administrative penalties for the failure to comply with a lawful demand for records which are required for the entry of merchandise. The Committee believes that administrative penalties are warranted because, under current law, the Customs Service has no administrative recourse other than resorting to a summons when requests for records are ignored. If the recordkeeper ignores a summons, the Customs Service has no recourse but to go to court. The delay, burden and expense associated with enforcing a summons has meant that such actions have been rare. The Committee believes that administrative penalties will provide an effective mechanism for enforcing the recordkeeping requirements of the Customs Service. The Committee intends, however, that the availability of an administrative penalty shall not reduce or limit in any way the authority of the Customs Service to issue summonses. Further, it is the Committee's firm intention that only those records that are required for the entry of merchandise should be within the purview of the administrative penalty provided by this section. The Committee believes that these penalties will allow the Customs Service to reduce the paperwork demands on an importer because the agency can waive the production of the records at entry while retaining authority to demand their production at a later time.

Under this section, the imposition of a penalty for failure to comply is not mandatory, thus giving the Customs Service the discretion to decide whether a civil penalty is warranted. Where an importer has adopted a recordkeeping compliance program in consultation with the Customs Service, a penalty may be inappropriate. Specifically, recordkeepers who are certified by the Customs Service for participation in the recordkeeping compliance program and are in general compliance with the program, shall, in the absence of willfulness or repeated violations, be issued a written warning notice (in lieu of a penalty) if they fail to comply with a demand for the production of records required for the entry of merchandise. However, willfulness in failing to produce demanded records or repeated violations of law by a recordkeeper may result in the issuance of penalties and removal of certification for the recordkeeping compliance program. The Committee intends that the Customs Service should exercise tight control over the imposition of recordkeeping penalties and that, until the Customs Service gains experience in administering this penalty, no such penalty should be issued without prior Headquarters review and approval.

In addition, the bill makes clear that any penalty assessed by the Customs Service may be remitted or mitigated under section 618 of the Tariff Act of 1930. In all cases, the amount of the penalty will depend on whether the failure to produce the records is due to willful conduct or negligence.

This section further provides that no penalty shall be issued if the demand for records is substantially complied with by the production of other evidence satisfactory to the Customs Service, if an act of God or other natural casualty or disaster prevents compliance with a lawful demand, or if demanded information was previously provided to and retained by the Customs Service.

Under the implementing bill, any penalty imposed under this section shall be in addition to any other penalty provided by law, except where the Customs Service assesses a penalty for a violation of section 592 of the Tariff Act of 1930 for a material omission of demanded information, or where the Customs Service takes disciplinary action against a customs broker under section 641 of the Tariff Act of 1930. With respect to customs brokers, the Committee notes that under section 509 of the Tariff Act of 1930 as amended herein, customs brokers can be considered recordkeepers, and subject, therefore, to disciplinary action under this section. However, the Committee notes further that the conduct of customs brokers is controlled by section 641 of the Tariff Act of 1930, which specifies penalties for violations of the law. For reasons of commercial necessity, brokers may act as importers of record in cases where the actual importer does not have an entry bond. Their status as "brokers" does not change because of this and failure to maintain the records specified in this section should not automatically subject them to the penalties set forth in paragraph (g) of this section. The Committee intends that the Customs Service shall apply section 641 of the Tariff Act of 1930 to brokers, including those who act as importers of record, unless there are exceptional circumstances. These occur when there is an egregious, flagrant or willful violation of the requirements of section 509 of the Tariff Act of 1930, or when there is a pattern or practice of abuse occurring over a sustained period of time in willful disregard of the recordkeeping requirements. The recordkeeping penalty assessed under section 641 for failure to comply with a demand for information shall follow the same principles as is the case under section 509. Each failure of a broker to comply with a demand under section 509 shall be actionable under section 641, and subject the broker to revocation, suspension or monetary penalties in lieu of a penalty under section 509.

Section 616: Judicial Enforcement

Section 510 of the Tariff Act of 1930 provides that a district court may issue a compliance order to a person who refuses to obey a summons issued under section 509 of the Tariff Act of 1930. The failure to abide by such court order may be punished as a contempt of court. Section 616 grants district court judges the authority to assess a monetary penalty for the failure to abide by a court order for the production of records, in addition to holding a non-complying party in contempt of court.

Section 617: Review of Protests

Section 515 of the Tariff Act of 1930 provides procedures for review of protests, administrative review and modifications of decisions, and requests for accelerated disposition of protests. This section amends section 515 to allow importers to request that the

Commissioner of Customs review a decision denying an application for further review. Review of such a request will be based solely on the basis of the record before the Customs Service at the time the application for further review was denied.

This section also authorizes the Customs Service, on its own initiative or pursuant to a request by a protesting party, to void a protest denied contrary to proper instructions. Proper instructions are only those instructions that are issued by an appropriate Customs Service official having the necessary authority vested by law or the Customs Service to issue such instructions. The Committee expects that, where an application is made, or the Customs Service on its own initiative reviews a protest denied contrary to proper instructions, the Customs Service will decide in a timely manner whether to void the denial of the protest. Finally, this section provides that all administrative action pertaining to a protest or application for further review will terminate when an action is commenced in the CIT arising out of such protests or applications and that any administrative action taken subsequent to the commencement of an action shall be null and void.

Section 618: Repeal of Provision Relating to Reliquidation on Account of Fraud

If the Customs Service determines that there is fraud in a case, it may, under section 521 of the Tariff Act of 1930, reliquidate the entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or reliquidation. Section 618 of this bill repeals section 521, which is no longer necessary since the Customs Service may use section 592(d) of the Tariff Act of 1930 to recover duties.

Section 619: Penalties Relating to Manifests

Section 584 of the Tariff Act of 1930 provides penalties for failure to produce a manifest and for manifest discrepancies; it also provides penalty procedures. Section 619 amends section 584 to reflect that manifests, notices, statements, and claims may be electronically transmitted.

Section 620: Unlawful Unlading or Transshipment

Section 586 of the Tariff Act of 1930 provides penalties for: unlading prior to the grant of permission; transshipment to any vessel for purpose of unlawful entry; and unlawful transshipment to any U.S. vessel. An unlading or transshipment because of accident, stress of weather, or other necessity may not be subject to a penalty. In order to close existing loopholes, section 620 of this bill, amends section 586 to cover hovering vessels and vessels receiving merchandise outside U.S. territorial waters.

Section 621: Penalties for Fraud, Gross Negligence, and Negligence; Prior Disclosure

Under section 592 of the Tariff Act of 1930, if merchandise is entered, introduced, or attempted to be entered or introduced by a false document, oral or written statement, or act, or omission which is material, and the result of fraud, gross negligence or negligence, the person(s) responsible may be liable for a civil monetary penalty.

In certain cases, the merchandise may be seized. Following written notice concerning the violation, a pre-penalty response and/or petition for relief may be filed requesting mitigation in accordance with established guidelines.

Section 621 of the implementing bill amends section 592 by prohibiting the electronic transmittal to the Customs Service of false information or data, and authorizing the Customs Service to recover underpayment or non-payment of taxes and fees resulting from a violation of section 592. The Committee believes that, in order for "informed compliance" to work, it is essential that the importing community share with the Customs Service the responsibility to ensure that, at a minimum, "reasonable care" is used in discharging the importer's responsibilities. These include classifying and appraising the merchandise, furnishing sufficient information to permit the Customs Service to fix final classification and appraisal of merchandise, taking measures that will lead to and ensure the preparation of accurate documentation, and providing adequate and accurate pricing and financial information to permit the proper valuation of merchandise. In meeting the "reasonable care" standard, the Committee believes that an importer should consider utilizing one or more of the following aids for proper compliance: seeking guidance from the Customs Service through the pre-import or formal ruling program; consulting with a customs broker, a Customs consultant, or a public accountant or attorney; using in-house employees, such as counsel, a Customs administrator, or if valuation is an issue, a corporate controller, who have experience and knowledge of Customs laws, regulations, and procedures; and, when appropriate, obtaining analyses from accredited laboratories and gaugers for determining technical qualities of an imported product. Where an importer chooses to use an outside expert, the importer is responsible for providing the expert with full and complete information to allow the expert to make entry or to provide advice as to how to make entry. If the above steps are taken, the importer will be presumed to have acted with "reasonable care" in making entry. The following are two examples of how the reasonable care standard should be interpreted by the Customs Service: (1) the failure to follow a binding ruling is a lack of reasonable care; and (2) an honest, good faith professional disagreement as to the correct classification of a technical matter shall not be considered to be lack of reasonable care unless such disagreement has no reasonable basis (e.g., snow skis are entered as water skis).

If an importer fails to use reasonable care in classifying and valuing the merchandise and presenting other entry data, the Customs Service may impose a penalty under the appropriate culpability levels of section 592 of the Tariff Act of 1930. The Committee notes that the Customs Service uses the following definitions for the various culpability levels in administering the present penalty guidelines and expects the Service to continue to use these definitions in the administration of the penalty provisions:

(1) *Negligence.*—A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences

therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Gross negligence.*—A violation is deemed to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

(3) *Fraud.*—A violation is determined to be fraudulent if the material false statement or act was committed (or omitted) knowingly (voluntarily and intentionally), with an intent to deceive, mislead, or convey a false impression, as established by clear and convincing evidence.

The Committee also notes the recent decision of the CIT in *United States* v. *Thorson Chemical Corp.,* Slip Op. 92–84 (May 28, 1992) in which Judge Carman stated, "While the statute itself does not define [the three degrees of culpability], the Court is guided by case law and Customs' own regulations."

Section 621 of the implementing bill also provides that the mere non-intentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct. The Committee has included this provision in order to address concerns expressed by industry representatives that this form of conduct not be held to constitute a pattern of negligent conduct. The Committee recognizes that, with increased reliance on electronic systems, it is entirely possible that an initial clerical error could be repeated numerous times. For example, where an entry level clerk or typist prepares documents using a model format as a guide, it is possible that an initial error may be repeated many times over. In such cases, multiple repetitions of an initial clerical error may not constitute a pattern of negligent conduct. The Committee urges the Customs Service to examine the nature of the data transcription at issue, and to take into consideration the element of time and the number of importations involved.

The Committee also recognizes that repetitive human errors may not, in some cases, constitute a pattern of negligence. The Committee expects that the Customs Service will make its determination based on the existence and operation of quality control procedures, the nature of the data transmission, the number of importations handled, and the amount of time involved in the action creating the error. The Committee intends, however, that a failure to use reasonable care as required by section 484 of the Tariff Act of 1930, where such failure results in repetitive errors, shall constitute a pattern of negligent conduct.

The Committee notes that the element of time may affect the determination in at least two instances. If a repetitive error goes undetected for more than six months, the Committee believes that the Customs Service should consider this a pattern of negligent conduct. For example, the Committee believes that the exercise of reasonable care should catch an error repeated in daily entries of merchandise. However, if there was but a single entry during that six-

month period, the converse would be true. If the Customs Service discovers cases where there are repetitive clerical errors in multiple entries, and such errors have not previously been disclosed by the importer in its exercise of reasonable care, the Committee does not intend that the importer will be shielded from a finding of negligent conduct.

The implementing bill further amends section 592 by defining the commencement of a formal investigation, for purposes of prior disclosure, as being the date recorded in writing by the Customs Service when facts and circumstances were discovered or information received to believe a possibility of a violation of section 592 existed. The Committee believes that there should be a clearly defined and objective standard by which to measure the date when a formal investigation has commenced. That standard must lie in the creation of a formal document or electronic transmission that will serve as evidence, if required, of the formal opening of an investigation. The Committee expects that such document or transmission will be maintained by the Office of Enforcement or other central unit designated within the Customs Service.

If a Customs official has reasonable cause to believe that a violation of section 592 has occurred, that official shall record the salient facts and present them to the Office of Enforcement or other central unit. That office shall determine whether the facts merit the commencement of a formal investigation. The Committee expects that Customs Service officials will exercise particular care in recording essential facts (including but not limited to names, types of issues (e.g., undervaluation and marking), date and time the case is opened, and nature of investigation); this requirement for careful recordkeeping by the Customs Service should allay the trade community's concerns that the benefits of prior disclosure will be denied in the absence of tangible evidence.

The Committee does not intend that the Customs Service disclose to the target of an investigation the fact that a formal investigation has opened. But if the agency determines that it is appropriate to issue a pre-penalty notice under section 592(b)(1), a copy of the written document or electronic transmission should be included as an exhibit. With that one document, it should be clear whether the alleged violation stems from information previously disclosed by the disclosing party. The time of disclosure will also be defined. If the importer's disclosure of the circumstances of the violation precedes the opening of the formal investigation, the case should be treated as one involving prior disclosure. But if the disclosure did not precede the opening of the formal investigation, the disclosing party will be left with the burden of proving that disclosure of the violation was made without knowledge that a formal investigation had been commenced.

Section 622: Penalties for False Drawback Claims

Section 622 creates, as part of the Tariff Act of 1930, a new section 593A to establish penalty provisions for the false submission of drawback refund claims and to establish a "Drawback Compliance Program" similar to the "Recordkeeping Compliance Program" described above. The Customs Service would be required under the voluntary program to inform potential drawback claimants clearly

about their rights and obligations. The Committee believes that the provision of penalties and the establishment of a drawback compliance program will promote informed compliance while balancing both trade facilitation and trade enforcement concerns.

The maximum statutory penalty for violations based on fraud would be three times the loss of revenue. For negligence, a drawback claimant qualifying for the "Compliance Program" would be issued a warning notice for an alleged first violation and then would be issued the following penalties on an escalating scale:

Second case—Not to exceed 20 percent of the loss of revenue;
Third case—Not to exceed 50 percent of the loss of revenue; and
Fourth and Subsequent—Not to exceed 100 percent of the loss of revenue.

A drawback claimant who does not qualify for the Compliance Program would be subject to an initial penalty not to exceed 20 percent of the loss of revenue. For a second violation, the penalty would be not to exceed 50 percent of the loss of revenue, with the penalty for third and subsequent violations not to exceed 100 percent of the loss of revenue.

For purposes of determining possible penalties, repetitive violations would be subject to a timeframe of a "rolling" three-year period (similar to a traffic violation) after which the "clock" would start over.

This section is to become effective on or after operational implementation by the Customs Service of a nationwide drawback selectivity program.

Section 623: Interpretive Rulings and Decisions; Public Information

Currently under section 625 of the Tariff Act of 1930, within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision), the Secretary of the Treasury is required to publish the decision in the "Customs Bulletin" or otherwise make it available for public inspection.

Section 623 of this bill reduces the time period for publication to 90 days. It further provides that adverse interpretive rulings may be appealed within the Customs Service, and requires that a ruling modifying or revoking an existing ruling be first published in the "Customs Bulletin" for notice and comment. The Secretary of the Treasury will give interested parties a 30-day period in which to submit comments. This section also requires the Customs Service to make available all information necessary for importers to comply with applicable laws and regulations. Any decision that limits the application of a court decision shall also be published for notice and comment in the "Customs Bulletin." It is the Committee's intent that the Customs Service will be deemed to have met its publication requirements under this section if it disseminates such information through the Customs Service electronic bulletin board if such information remains publicly available in an accessible, retrievable format.

Section 624: Seizure Authority

Under section 595a(c) of the Tariff Act of 1930, any merchandise that is introduced or attempted to be introduced contrary to law (other than in violation of section 592 of the Tariff Act of 1930) may be seized and forfeited.

Section 624 of the implementing bill amends the seizure authority of the Customs Service to codify existing practice and clarify the circumstances under which merchandise may be seized and forfeited. Nothing in this section is intended to change existing procedures in effect between the Customs Service and other Federal agencies regarding the seizure, forfeiture or other disposition of merchandise. The Committee does not intend that this section change current law or Customs Service practice regarding parallel imports.

The section provides as follows: (1) merchandise that is stolen or smuggled or clandestinely imported, or that is contraband or a controlled substance, shall be seized and forfeited; (2) merchandise subject to a restriction or prohibition pertaining to health, safety, or conservation may be seized and forfeited if not in compliance with the restriction or prohibition; (3) merchandise which requires the authorization of a U.S. agency, but that is not accompanied by such, may be seized and forfeited; and (4) merchandise subject to copyright, trademark, trade name, or trade dress protection, and merchandise that is intentionally falsely marked with the name of a country which is not the country of origin in violation of section 304 of the Tariff Act of 1930 or for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have marking violations may also be seized and forfeited.

In addition, this section provides that if merchandise is subject to quantitative restrictions requiring a permit and such document is not presented, the merchandise shall be detained unless the permit is counterfeit, in which case the merchandise shall be seized and forfeited. Also, if the merchandise is imported contrary to applicable laws governing the classification or appraisement of the merchandise and there are no issues concerning the admissibility of the merchandise, it may be seized only in accordance with section 592 of the Tariff Act of 1930.

SUBTITLE B—NATIONAL CUSTOMS AUTOMATION PROGRAM

Section 631: National Customs Automation Program (NCAP)

This section is intended to give the Customs Service the direct statutory authority to implement the NCAP, which provides for full electronic processing of all Customs-related transactions. Section 631 defines the NCAP as an automated and electronic system for processing commercial importations and lists the existing and planned components of the program. The Committee understands that the list of planned components shall be expanded in the future as other components are initiated after the date of enactment. Participation in NCAP is voluntary, but the Customs Service will establish eligibility criteria for participation. Since NCAP is a single program encompassing all of the customs electronic processing procedures of the Customs Service, the Committee expects that filers

will either use NCAP electronic procedures, or use current procedures for filing paper documents. It is the Committee's intention that nothing in this section shall preclude the current practice of filing paper documentation within a single district. The Committee intends, however, to encourage electronic filing whenever possible. The Committee expects that the Customs Service, in developing criteria for eligibility in NCAP, will qualify as broad a membership of the trade community as possible, including brokers, importers, express couriers, transportation companies, and foreign trade zone and sub-zone firms.

Section 631 identifies the goals of the NCAP as ensuring that all regulations and rulings administered or enforced by the Customs Service are administered or enforced in a manner that is uniform and consistent, minimally intrusive upon the normal flow of business activity, and ensures compliance with applicable laws and regulations.

This section requires the Customs Service to provide the Committees on Finance and Ways and Means with a number of reports relating to the implementation of the NCAP. The Committee will also ask the GAO to prepare an evaluation, as described below, of the remote entry filing component of the NCAP. The purpose of these reports is to provide the Committees with a comprehensive assessment of the progress achieved in implementing the NCAP and analyses of the effects the NCAP is having, or is expected to have, on the operations of the Customs Service, on the users of the program and on the trade community at large, including importers and small, medium-sized and large brokers.

First, the Customs Service must provide Congress an overall implementation plan for NCAP within 180 days of the enactment of this legislation. The overall implementation plan will include a general description of the NCAP, a brief description of each of the existing components of the program, and estimates regarding the stages on which planned components of the NCAP will be brought on line. In addition, the overall implementation plan will also include an analysis of the effects that the existing components of NCAP are having, and the effects the planned components are likely to have, on Customs Service occupations, operations, processes and systems, and on the trade community (including small, medium-sized and large brokers and importers) using, or likely to use, NCAP.

Second, for each planned NCAP component, including remote filing, the bill requires the Customs Service to prepare a separate implementation plan in consultation with the trade community, test the component, and transmit to Congress the implementation plan, testing results, and an evaluation report. The Committee intends that the Customs Service consult with all relevant parties, including small, medium-sized and large brokers, importers, express couriers, sureties, transportation companies, including air and sea carriers, the National Treasury Employees Union and foreign trade zone and sub-zone firms, as necessary, in developing the implementation plan for each of the components. The Committee expects that testing of all planned components, including remote filing, will be conducted under carefully delineated circumstances with objective measures of success or failure, a predetermined timeframe and

a defined class of participants. And in preparing its evaluation report on each of the components, the Committee expects the Customs Service to solicit the views of all of the relevant parties, including but not limited to all of the parties with whom the Customs Service consulted in developing the implementation plan. The Committee expects these evaluation reports will include detailed information on the scope of the testing and the parameters under which any testing was conducted and an objective assessment of the results. The Committee expects the evaluation reports of each of the components to include summaries of the comments received by all relevant parties.

The implementation plan, the testing results and the evaluation report for each of the components will be transmitted to the Committees on Finance and Ways and Means.

Third, the GAO will also prepare an independent evaluation of the remote filing component of the program and transmit the report to the Committees on Finance and Ways and Means. In order to ensure that the GAO report and the Customs Service report will be available to the Committees at approximately the same time, the Committee expects the Customs Service to inform the Committee well in advance of the approximate date on which it expects to submit the implementation plan, testing results and evaluation of remote entry filing to the Committee so that the GAO may begin its evaluation in a timely manner.

In order to ensure that the Committee will have sufficient time to review the evaluation reports of the planned components, section 631 provides that the Customs Service may not implement the relevant program component on a permanent basis until 30 session days have elapsed after the submission of the relevant evaluation report. The Committee believes that it is necessary to establish a layover period during a time when Congress will be in session in order to provide Congress the opportunity to seek any necessary modifications to the program. However, the Committee intends that no further legislation is necessary before the Customs Service may implement the planned components of the program, and implementation may occur at any time after enactment as long as all of the requirements are met. The Committee intends that testing by the Customs Service of any planned NCAP component, including remote filing of paper documentation, shall not be limited by any provision in this section.

Fourth, the bill requires the Customs Service to develop a user satisfaction survey of parties participating in the program and evaluate the results of the survey every two years. Fifth, the Customs Service will also be required to submit a separate evaluation of the cargo selectivity component of the program. Sixth, beginning in fiscal year 1994 and annually thereafter through fiscal year 2000, the Customs Service will be required to transmit to the Committees on Finance and Ways and Means a written evaluation of all of the planned components of the program, with particular attention to remote entry filing. In preparing its reports, the Customs Service will be required to solicit public comments through the "Customs Bulletin," and shall consult with all relevant segments of the trade community, including small, medium-sized, and large brokers, importers, shippers and others.

Section 631 further provides that the Customs Service must publish a request for comments in the Customs Bulletin in order to solicit the views of the trade community concerning the implementation plan and evaluation of each of the planned components, and in preparing other required surveys, evaluations and reports. The Committee expects that the agency will also provide notice of the request for comments through other channels available to it, including electronic means. The Committee intends that the request for comments reach as broad an audience as possible.

This section establishes specific conditions for the remote location filing component of NCAP. If a filer qualifies and elects to file from a remote location, then the filer must present electronically specified core entry information on an entry-by-entry basis, including electronic entry of merchandise, electronic entry summary, automated invoice information (when required by the Customs Service) and electronic payment of duties, fees, and taxes. The Customs Service may expand this core entry list in the future by regulation as capabilities develop. If any of the above means for filing core entry information electronically are not used, then paper documentation shall be filed in the district designated for examination.

With respect to the core requirements, the Committee intends the following definitions to apply: electronic entry means electronic submission of Form 3461 or Form 3461 Alt. information; electronic entry summary means electronic submission of Form 7501 or Import Activity Summary Statement information; automated invoice information means use of Automated Invoice Interface, but only applies when required by the Customs Service; and electronic payment of duties, fees, and taxes means use of existing Automated Clearing House procedures.

To address concerns about remote location filing and about enforcement under the NCAP, section 631 imposes several additional requirements relating to remote filing. First, this section mandates that the Customs Service may not permit any exemptions or waivers from the remote filing requirements. It also clarifies that participants eligible for remote location filing are limited to those who currently have the right to make entry under section 484(a)(2)(B) of the Tariff Act of 1930. Finally, section 631 of the implementing bill authorizes the Customs Service to deny participation in, or remove a participant from, remote filing should the agency have any concerns about enforcement.

After satisfying the core entry information requirements, filers must meet additional entry information filing requirements. These requirements will be published and periodically updated. Any additional entry information that must be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information, may be filed from a remote location only if certain conditions are met. If the Customs Service can accept the information electronically, then it shall be filed electronically.

If the Customs Service cannot accept the additional information electronically, the circumstances under which filers may file remotely are limited. In all cases where a document that is necessary for the release of the merchandise cannot be electronically accepted, the paper documentation must always be filed in the Customs

district designated by the entry filer for purposes of examination of the merchandise by the Customs Service. Before January 1, 1999, all other types of additional paper documentation must be filed in the district designated for examination. After January 1, 1999, only those paper documents that are not necessary for the release of the merchandise may be filed at a remote location. These dates reflect the Committee's view that an additional two years beyond the dates proposed by the Administration are necessary to allow the trade community to adjust to remote filing. It is the Committee's intent that all documents necessary for the release of goods, including those documents required by other Federal agencies for release, which the Customs Service cannot accept electronically, be filed in the district designated for release and not remotely.

Under this section, the importer may file any information required by the Customs Service after entry summary in a remote location, whether using paper or electronic means. The Committee will request the GAO to conduct a comprehensive review of the remote entry filing component two years after that component is implemented on a permanent basis. The Committee intends that the GAO evaluate the implementation of the component, including the extent to which remote filing is used, the effect remote filing has had on the operations of the Customs Service and the distribution of its workload and employees, the costs and benefits of remote filing to importers, small, medium and large brokers, transportation companies and foreign trade zone and sub-zone companies, and other relevant parties, and the impact, if any, that remote filing has had on the ability of the Customs Service to enforce our trade, customs and drug laws.

The Committee believes that NCAP will enable the Customs Service to make more efficient use of its import specialist work force by channeling work to remote locations. However, the Committee does not intend that this bill prompt the movement of Customs Service personnel from one location to another to implement the goals of the program. The Committee has received assurances from the Commissioner of Customs that the Customs Service will not remove import specialist positions from the Customs districts as a result of remote filing. The Committee expects that the agency will continue to use the full complement of import specialists at the district level.

Section 632: Drawback and Refunds

Section 313 of the Tariff Act of 1930 permits drawback (a refund or remission) of the duties paid on imported merchandise when articles manufactured or produced with the use of such imported merchandise are exported and in certain other circumstances. Section 632 of the implementing bill contains provisions intended to expand U.S. exports and facilitate the use of drawback by easing administrative burdens while ensuring improved compliance (through increased penalties and informed compliance provisions) with the laws and regulations governing drawback.

Under current law, if dutiable raw materials and substituted domestic or duty-free raw materials of the same kind and quality are used by one manufacturer to make new articles that are exported, those articles are deemed to have been made with the dutiable raw

materials and duty is refunded. Section 632 permits drawback upon exportation or where merchandise has been destroyed under customs supervision, if such articles have not been used prior to exportation or destruction. This section also enacts current practice to permit drawback for the substitution of any materials, not just domestic or duty-free materials.

Current law provides that an importer whose foreign supplier failed to follow the importer's purchase specifications or samples is entitled to a duty refund if the importer returns the imported merchandise to the Customs Service within 90 days after release, provides sufficient evidence to show that the foreign supplier failed to follow the importer's specifications or sample, and then exports the merchandise. The implementing bill amends the rejected merchandise drawback provisions to extend the period for return to the Customs Service to three years, to allow destruction of the imported merchandise as an alternative to exportation, and to allow the importer and foreign supplier to agree that the imported merchandise was defective without reference to purchase specifications or samples. If the importer and foreign supplier could not agree that the merchandise was defective, the Customs Service would be required to make that determination. Under this section, imported merchandise could be kept in the United States for up to three years, and the importer could get a duty refund if it was shown that the merchandise did not conform to specifications or sample or was defective at the time of importation.

Current law also provides for "same condition" drawback whereby dutiable articles or substitute fungible articles, when exported or destroyed, are eligible for duty refund if the exported or destroyed articles were not used in the United States and are in the same condition as the dutiable articles when they were imported. Under a recent court decision (*B.F. Goodrich* v. *United States,* 794 F. Supp. 1148 (CIT 1992), any person who possessed the exported articles and paid the duty on the imported merchandise may claim the duty refund. Section 632 renames the same condition drawback provision "Unused Merchandise Drawback," and amends the provision in several ways. The provision will allow exporters to claim drawback on imported merchandise, or other domestic or imported merchandise that is substituted for the imported merchandise, that is not used within the United States before exportation or destruction, while removing the requirement that the merchandise be in the same condition. This allows for the possibility that drawback may be claimed on exported or destroyed unused merchandise that has physically deteriorated. Consistent with the recent court decision in *Central Soya* v. *United States,* 761 F. Supp. 133 (CIT 1991), affirmed 953 Fed. 2nd 630 (CAFC 1992), the provision provides that exporters may endorse this right to importers or any intermediate party, when substitution is not involved. In light of the *Goodrich* case, for substitution under this provision, the Committee intends that, as a general rule, the possessor of the exported merchandise must have paid duties on the imported merchandise or have received from the person who imported and paid the duties on the imported merchandise a certificate of delivery for the imported merchandise, commercially interchangeable merchandise, or any combination thereof.

Section 632 also changes the standard for substitution under same condition or unused merchandise drawback from "fungible" to "commercially interchangeable." It is the Committee's intent that "commercial interchangeability" does *not* mean interchangeable in all situations. The Committee intends that, in determining whether merchandise is "commercially interchangeable," the Customs Service should evaluate the critical properties of the substituted merchandise, rather than basing its determination on subjective standards. The Committee intends that, in determining the commercial interchangeability of two articles, the Customs Service should consider the following criteria, among other factors: governmental and recognized industry standards, part numbers, tariff classification, and relative values. The Committee intends that the test be more stringently applied if the article was destroyed rather than exported. This section permits certain incidental operations with respect to the merchandise.

Section 632 also permits the electronic filing of drawback claims.

For finished petroleum derivatives, an amendment to the drawback statute by the Customs and Trade Act of 1990 (Public Law 101-382, section 484A) was intended to establish monthly accounting procedures for drawback payments on the covered crude petroleum and petroleum derivatives stored in common storage with other crude petroleum and petroleum derivatives of the same kind and quality. Because of the requirement that the crude petroleum and petroleum derivatives must be withdrawn for export from the common storage facility where they are stored, effective use of the provision has proven impracticable (because the covered petroleum products may be stored at numerous common storage facilities before reaching the common storage facility from which they are exported and because of the recordkeeping requirements necessary to trace the covered petroleum products to the common storage facility from which they are exported). Section 632 of the implementing bill amends the petroleum drawback provision to implement the intent of the Congress as set forth in the Customs and Trade Act of 1990.

Specifically, section 632 allows accounting for crude petroleum and petroleum derivatives on a quantitative basis. The crude petroleum or petroleum derivatives would have to be exported: (1) within 180 days of the duty-paid entry of crude petroleum or petroleum derivatives of the same kind and quality; or (2) during the period of manufacture or within 180 days after the close of the manufacturing period for covered petroleum products manufactured under the drawback law. For purposes of the provision relating to the purchase or exchange of a covered manufactured petroleum product, the covered manufactured petroleum product may be identified by a bill of lading, or equivalent document of receipt, together with a waiver by the transferrer of any rights to drawback on the covered manufactured petroleum product.

Section 632 also amends the packaging material drawback provision to expand eligibility for dutiable packaging material if used in the packaging of either the dutiable imported article or its substitute article as long as that article was exported or destroyed.

This section also establishes a period of three years from the date of export or destruction in which to file a complete claim. By virtue

of changes elsewhere in this bill, the Committee understands that the Customs Service would have three years from the date of payment of a claim to initiate the verification of that claim. The bill also provides that, if a drawback claim is made under one subsection of section 313 of the Tariff Act of 1930 but is denied, the claim will be deemed to have been filed under any other subsection if the claim is allowable under that subsection. The Committee understands that the Customs Service will not interpret this provision as imposing a requirement on it to investigate all alternatives in addition to the claimed basis before liquidating the drawback claim as presented, but will interpret the provision as allowing such a claimant to raise the alternative subsections by protest under section 514 of the Tariff Act of 1930.

Section 632 also allows a company to buy another company's factory and satisfy the "one manufacturer" requirement, under certain conditions. It also allows a person to buy a factory or division of another company and include a transfer of drawback rights. In all cases, the value of the realty and personalty transferred must exceed the value of the drawback rights transferred to prevent pure sales of drawback rights. The Committee intends that a Trustee in Bankruptcy who has succeeded to all of the assets of an entity in bankruptcy would be considered to be a drawback successor. This section also requires certifications against multiple claims of drawback rights.

Section 632 also requires any person who provided a certification of a fact which enabled another person to perfect a claim for drawback to keep records to show the validity of the certified fact. Section 632 codifies current Customs Service practice against "piggybacking" other duty exemption benefits (FTZs, bonded warehouses, and duty-free temporary importation) onto the drawback benefits and provides that only one drawback claim per exportation or destruction will be allowed, but provides for appropriate credit or deduction for claims covering components or ingredients.

With respect to the current practices of the Customs Service for auditing drawback claims, the Committee is concerned that the Service may be denying entire claims in cases where a claim is deficient only with respect to a small number of entries or due to minor omissions. The Committee expects that if the entire universe of the claimed import entries and exports is audited and the audit reveals that only a portion of a company's claims are deficient, drawback should be denied only on the deficient portion. If, however, a representative sample is audited and the audit reveals that a significant portion of the audited claim is deficient, then denial of a drawback claim may extend beyond the portion of the claim audited.

The Committee is also concerned with the lack of consistency with respect to the timeframes for record retention, submission of drawback claims and potential audit exposure. It is the Committee's expectation that the Customs Service will issue drawback regulations that take into consideration the various time limitations for recordkeeping, filing claims, amendments and clarifications and for auditing and liquidating drawback claims.

Section 632 enters into effect upon the date of enactment of the Act (see section 692). The Committee intends that this section is

applicable to any drawback entry made on or after the date of enactment as well as to any drawback entry made before the date of enactment if the liquidation of the entry is not final on the date of enactment.

Section 633: Effective Date of Rates of Duty

This section of the bill makes technical and conforming amendments to section 315 of the Tariff Act of 1930, which sets forth the effective date of the applicable rate or rates of duty imposed on any article of merchandise entered for consumption or withdrawn from warehouse for consumption. The implementing bill updates the language used in the section by substituting "Customs Service" for "the appropriate customs officer" to reflect agency's modernization and automation objectives, and changes a reference to the old Tariff Schedules of the United States (TSUS) to a reference to the equivalent provision in the Harmonized Tariff Schedule of the United States (HTSUS).

Section 634: Definitions

This section modifies section 401 of the Tariff Act of 1930, which sets forth definitions of certain terms used in the customs laws. The section amends the definition of "hovering vessel" to close certain loopholes in the law, and adds definitions of "electronic transmission;" "electronic entry;" "electronic data interchange system;" "National Customs Automation Program;" "import activity summary statement;" and "reconciliation."

Section 635: Manifests

Section 431 of the Tariff Act of 1930 currently requires the filing of a vessel manifest, and specifies requirements for the form, content, signing and delivery, and public disclosure of that manifest. Section 635 deletes the specific requirements for the contents of a manifest and instead authorizes the Secretary of the Treasury to prescribe the manifest form and content and the manner of production and delivery of the manifest. This will provide the Customs Service with authority to permit the electronic transmission of manifests. This section further provides that manifests may be supplemented by "bill of lading data" to be submitted with a manifest and clarifies responsibilities concerning production and delivery of manifests.

The Committee believes that these revisions to the manifest requirements will permit the Customs Service to link manifest production requirements to better target high risk shipments according to such criteria as type of merchandise and country of origin. The Committee understands that, in many cases, the form and content of manifests have been developed and stipulated in international treaties to which the United States is a signatory, and the Committee expects that the Customs Service will respect U.S. obligations under these treaties as it develops its manifest requirements.

The section also includes a provision for correcting a manifest discrepancy; that authority is currently provided in section 440 of the Tariff Act of 1930, which is repealed by this bill.

This section of the implementing bill will also allow summary manifesting by carriers, including express consignment companies, of letter and document shipments which are already exempt from Customs Service entry requirements. Letter packs and document packs would be required to be segregated according to size and country of origin. While the Committee believes that these changes are desirable because they will minimize the recordkeeping and data processing burdens on the affected industry, it is the Committee's firm intention that these changes not adversely affect the ability of the Customs Service to enforce the trade, customs and drug laws. The Committee understands that letter and document packs that may contain "merchandise," especially monetary instruments, are still subject to the current separate manifesting requirements. The Committee also understands that the Customs Service cannot guarantee overnight clearance of items subject to summary manifesting, since additional examination procedures may be required. Nonetheless, the Committee expects the Customs Service to make best efforts to achieve overnight clearance of such items in most instances.

Section 636: Invoice Contents

Section 481(a) of the Tariff Act of 1930 provides for the mandatory production of an invoice and specifies the information that must be stated on the invoice. Subsection (b) provides the procedures for shipments not purchased and not shipped by the manufacturer. Subsection (c) provides procedures for merchandise purchased in different consular districts. Subsection (d) provides that the Secretary of the Treasury may provide exceptions to the requirements of this section by regulation. Section 636 of the implementing bill amends section 481 to allow importers to transmit invoices, bills and other documents to the Customs Service by electronic means. This section also authorizes importers and the Customs Service to use partial invoices and the electronic equivalent of invoices, bills, or other documents.

Section 637: Entry of Merchandise

The essential requirements for the entry of merchandise are set forth in section 484 of the Tariff Act of 1930. Section 637 of the implementing bill amends the law in several respects. It authorizes importers to transmit entry documents and/or data electronically to the Customs Service. It also permits the periodic filing of entries by authorizing the Secretary to prescribe by regulation the time periods within which an entry must be filed. These regulations will provide that an importer may transmit electronically, by the 20th day following the end of a calendar month, an import activity summary statement covering all or some of the entries made during the calendar month. This electronic transmission would substitute for the filing of individual entry summaries. Whether an importer chooses to use the entry/entry summary procedure or the entry/import activity summary statement, reconciliation would be available. Reconciliation is designed to permit those elements of an entry, other than those elements relating to the admissibility of the merchandise, that are undetermined at the time an entry summary or an import activity summary statement is required to be submitted,

to be provided to the Customs Service at a later date. Importers that elect to use the reconciliation procedures will be required to post a bond or security, unless the bond or security filed at the time of entry also covers reconciliation statements.

Section 637 also permits the use of the reconciliation procedures for antidumping/countervailing duties (AD/CVD) duty entries. The Customs Service will be able to use these procedures for AD/CVD duty entries by extending the time when a reconciliation is due for the AD/CVD entries, beyond the 15-month time frame, to no later than 90 days after the Customs Service notifies an importer that a period of review has been completed. Section 637 amends section 771 of the Tariff Act of 1930 to define the term "entry" to include a reconciliation, and also requires the Customs Service to consult with the Department of Commerce in developing regulations to implement these procedures.

The Committee intends that the reconciliation procedures may apply to AD/CVD entries. The purpose of the reconciliation for AD/CVD cases will be for the importer to group entries together for purposes of assessment and liquidation. By amending section 771 to define the term "entry" to include a reconciliation, the Committee stresses that the reconciliation entry represents the importer's liability for AD/CVD duties; and therefore, the Customs Service may liquidate the underlying entries for purposes other than the collection of antidumping or countervailing duties. The Committee intends that the Customs Service work closely with the Department of Commerce in developing regulations to implement this concept.

Entries covered by an entry summary or an import activity summary statement will be liquidated in accordance with normal Customs Service procedures, or kept open at the importer's request. If an importer wishes to submit a reconciliation for a particular entry or entries, he may do so by specifying in the entry summary or import activity summary statement that he wishes to provide relevant data at a later time, that is, when it becomes available. When the importer files the reconciliation, the Customs Service will compare the information provided in the entry summary or import activity summary statement with the information provided in the reconciliation and make proper adjustments.

This approach permits the liquidation of an entry despite the fact that undetermined information has not been transmitted to the Customs Service through the reconciliation process. For example, if an entry covers merchandise for which the importer supplies "assists" which can only be calculated on an annual basis, the importer can indicate to the Customs Service that information contained in the entry is accurate for all purposes, other than its value which is to be adjusted by the undetermined assists, and should be liquidated. Upon liquidation of the entry, any decision of the Customs Service affecting that liquidation, for example classification, could be protested pursuant to section 514 of the Tariff Act of 1930. When the "assist" information is later furnished in the reconciliation statement, the reconciliation statement will be treated as an entry, and liquidated. The decisions of the Customs Service pertaining only to the information contained in the liquidated reconciliation would be the proper subject of a protest.

The Committee believes that the introduction of the import activity summary statement and the concept of reconciliation will permit importers and customs brokers who are capable of interacting electronically with the Customs Service to handle Customs transactions in a more efficient way, thus reducing paperwork and administrative costs.

Under this section, importers will be required to use "reasonable care" in making entry. In the Committee's view, this requirement establishes a "shared responsibility" between the Customs Service and the trade community, and allows the Customs Service to rely on the accuracy of the information submitted by importers. This should allow the Service to streamline entry procedures. It is the Committee's view that the concept of "shared responsibility" means, at a minimum, that "reasonable care" be used in discharging the activities for which the importer bears responsibility. These include providing the classification and valuation of the merchandise, the furnishing of information sufficient to fix the final classification and appraisal of merchandise by the Customs Service; taking measures that will lead to and ensure the preparation of accurate documentation; and providing sufficient pricing and financial information to permit proper valuation of merchandise. Failure to use reasonable care would be actionable under the appropriate culpability levels of section 592 of the Tariff Act of 1930.

When an importer elects to submit a reconciliation, the Committee intends that "reasonable care" be used in preparing information contained in the reconciliation and the information contained in the entry summary or import activity summary statement that is certified by the importer for liquidation. However, it is the Committee's intent that, in most cases, discrepancies and inaccuracies in information contained in entry summaries or import activity summary statements for which a reconciliation will be submitted should not be penalized under section 592 for failure to exercise reasonable care since the importer, by noting its intent to submit a reconciliation, is indicating that the information in the entry summary or import activity summary statement relating to the reconciliation is incomplete.

It is the Committee's intent that all certified electronic transmissions shall be binding and have the same force and effect as a signed paper document.

Section 638: Appraisement and Other Procedures

Under section 500 of the Tariff Act of 1930, the appropriate Customs Service official shall appraise merchandise, ascertain the classification and rate of duty, fix the amount of duty to be paid, and determine any increased or additional duties due or any excess of duties deposited, liquidate the entry, and give proper notice of liquidation. Section 638 of this bill updates the law to reflect automation and computerization realities and acknowledge that information and data may be electronically transmitted. As part of the "shared responsibility" concept, it is the intent of the Committee that the importer have the responsibility to correctly value and classify the merchandise. This section retains the requirement that the Customs Service has the responsibility to ensure that entry was made correctly and determine the amount of duties due, *i.e.*,

that it fix the final classification, appraisement, and rate of duty on an entry, and liquidate the entry. The amendments made by this section also reflect changes in the law which require the Customs Service to assess user fees and taxes on entries. Finally, the bill authorizes the Customs Service to liquidate reconciliations and to give or transmit electronically notice of liquidation in such form and manner as is prescribed by regulation.

Section 639: Voluntary Reliquidations

Under section 501 of the Tariff Act of 1930, a liquidation of any entry may be reliquidated within 90 days from the date on which notice of the original liquidation is given. Section 639 of this bill authorizes the electronic transmission of reliquidation notices.

Section 640: Appraisement Regulations

Section 502(a) of the Tariff Act of 1930 provides that the Secretary of the Treasury shall issue regulations necessary to secure the proper appraisement, classification, and assessment of duties at the various ports of entry, and to direct any Customs officer to go from one port to another port to appraise the imported merchandise. Section 502(b) states that no ruling made by the Secretary of the Treasury imposing Customs duties shall be reversed or modified adversely to the United States except in concurrence with the Attorney General, or a final decision of the CIT, or a final decision of a binational panel pursuant to the CFTA.

Section 640 of the implementing bill amends section 502 to facilitate the implementation of remote filing under the NCAP by authorizing the Secretary to direct Customs officers at one port to review entries filed at another port. This section also repeals the requirement that the concurrence of the Attorney General be obtained prior to the reversal of a ruling by the Secretary construing any law imposing customs duties.

This section also authorizes the Secretary to prescribe regulations for the issuance of binding rulings prior to the entry of merchandise. The Committee expects that these changes will provide greater certainty to importers through the binding rulings program and facilitate the entry process.

Section 641: Limitation on Liquidation

Section 504 of the Tariff Act of 1930 provides for the liquidation of entries within one year unless liquidation is extended or suspended. Liquidation can be extended by the Customs Service or the importer or suspended because of statute or court order. The Customs Service must provide notice of the extension or suspension of liquidation. Any entry not liquidated at the expiration of four years shall be deemed liquidated unless liquidation continues to be suspended. When the suspension is removed, the entry must be liquidated within 90 days.

In order to implement the reconciliation process, section 641 of the implementing bill makes conforming amendments regarding the reconciliation of entries and the liquidation of entries subject to reconciliation. It provides that a reconciliation shall be treated as if it were an entry summary, and subject to the normal extension, suspension and protest requirements under sections 504 and

514 of the Tariff Act of 1930. To reflect technological changes, this section also authorizes the electronic transmittal of notices of extension and suspension of liquidation.

In addition, section 641 changes the time period, from 90 days to six months, in which the Secretary of the Treasury must liquidate a suspended entry after the suspension is removed; the six-month period runs from the date the Customs Service is notified that the suspension has been removed.

The Committee has also made clear that the four-year limitation on unliquidated merchandise does not apply to suspended entries. This is intended to overturn the decision rendered in *Nunn Bush Shoe* v. *United States,* CIT, Slip Op. 92–5 (1992). The four-year limitation will apply only to extended entries, *i.e.,* it sets the outer limit for extensions. Any entry whose liquidation is extended that is not liquidated within four years, and any entry whose liquidation is suspended and such suspension is subsequently removed but the entry is not liquidated within six months after the Customs Service receives notice of the removal, shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record at the time of entry.

In order to correct an omission in existing law and codify existing administrative practice, this section also provides that the Customs Service must inform sureties when a suspension is removed or extended. Currently, the agency is required only to provide notice of an extension of liquidation of an entry to sureties when the liquidation is suspended by statute or court order. This section also requires notice to be sent to the surety when liquidation is extended because the Customs Service requires additional information or when the importer has requested an extension. It further allows the Customs Service to extend liquidation when information needed for insuring compliance with applicable law is not available to or in the possession of the Customs Service.

The implementing provision retains the current authority for the Secretary of the Treasury to extend liquidation if sufficient information is not available to the Customs Service to ensure compliance with applicable laws or the importer requests an extension.

Section 642: Payment of Duties and Fees

Section 505(a) of the Tariff Act of 1930 provides that, unless merchandise is entered for warehouse or transportation, or under bond, the importer shall deposit at the time of entry or at such later time as the Secretary of the Treasury shall prescribe by regulation (but not to exceed 30 days after the date of entry) the duties estimated to be due. Section 505(b) provides that the appropriate Customs officer shall collect any increased or additional duties due or refund any excess duties deposited as determined by liquidation or reliquidation. Section (c) provides that duties due upon liquidation or reliquidation shall be due 15 days thereafter, and unless payment is received within 30 days after that date, duties shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation.

Section 642 of the implementing bill provides the Customs Service with authority to permit the periodic payment of duties, taxes, and fees. The Committee believes that such periodic payments

should permit the Customs Service to streamline entry procedures. Under this section, periodic payments may be made by filing a monthly import activity summary statement together with the amounts due. The section further provides that interest will accrue on periodic payments from the first day of the month the import activity summary statement is or should be filed until the day the statement is actually filed. These changes also stipulate that underpayment or overpayment of duties and fees determined at liquidation or reliquidation shall be collected or refunded together with interest, as appropriate. The Committee believes that these changes will provide equity in the collection and refund of duties and taxes, together with interest, by treating collections and refunds the same.

Section 643: Abandonment and Damage

Section 506 of the Tariff Act of 1930 provides that allowance shall be made in the estimation and liquidation of duties for abandonment or damage to merchandise pursuant to regulations prescribed by the Secretary of the Treasury. Section 643 of the implementing bill deletes obsolete language, makes conforming amendments regarding entries and invoices, and authorizes communication between the Customs Service and the importing community through electronic means.

Section 644: Customs Officer's Immunity

Under current law (section 513 of the Tariff Act of 1930), immunity is provided to a Customs officer for any decision relating to appraisement, classification, or duties due on collection. Section 644 extends the immunity of Customs officers to include the collection of fees and taxes.

Section 645: Protests

Section 514 of the Tariff Act of 1930 provides that the decisions of the appropriate customs officer relating to appraisal, classification and rate and amount of duties chargeable, all charges or exactions within the jurisdiction of the Secretary of the Treasury, the exclusion of merchandise from entry or delivery or a demand for redelivery, the liquidation or reliquidation of an entry, the refusal to pay a drawback claim and the refusal to reliquidate an entry shall be final unless protested in accordance with the provisions of this section. Section 645 of the implementing bill provides that reconciliation decisions may be protested, but the protest may only concern the issues contained in the reconciliation. This section also authorizes the electronic transmittal of protests, and permits the Secretary of the Treasury, by regulation, to add requirements for the content of protests.

Section 646: Refunds and Errors

Under current law (section 520 of the Tariff Act of 1930), the Secretary of the Treasury is authorized to refund duties or monies on (1) excess duty deposits as determined at liquidation or reliquidation; (2) erroneous or excessive fees, charges, or exactions; (3) remitted or mitigated fines, penalties, and forfeitures; and (4) duties, fees, charges, or exactions paid by reason of clerical error. Section

520(c) provides that, notwithstanding that a valid protest was not filed, the appropriate Customs officer may reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law; or any assessment of duty on household or personal effects in which an application for refund has been filed. Section 520(d) provides that if a determination is made to reliquidate an entry as a result of a protest filed, or under section 520(c), or by court order, interest shall be allowed on any amount paid as increased or additional duties. Interest shall be calculated from the date of payment to the date of the refund or the filing of a summons, whichever occurs first. Section 646 of the implementing bill makes conforming amendments regarding reconciliations, and clarifies that clerical errors or other inadvertencies may result from or be contained in an electronic transmission. Section 520(d) is repealed in section 642 of this bill, which provides for interest payments.

Section 647: Bonds and Other Security

Section 623 of the Tariff Act of 1930 gives the Secretary of the Treasury the authority to require or authorize Customs officers to require bonds or other security to protect the revenue or to assure compliance with any provision of law, and to set the conditions and form of the bonds. Section 647 of this bill permits the Secretary of the Treasury to authorize the electronic transmittal of bonds to the Customs Service and clarifies that any bond electronically transmitted shall be binding on the parties thereto and have the same force and effect as if it were manually executed, signed, and filed. This provision confirms that electronic transmission to the Customs Service will bind both the principal and surety. This section is intended to eliminate potential defenses to claims raised by principals or sureties based solely on the contention that a bond is not valid because it is not physically signed. This provision is intended to avoid the situation which can arise with written bonds in which the principal may not be bound because of the improper execution or non-execution of a bond, while a surety, who properly signed the bond, finds itself solely liable on the obligation.

Section 648: Customhouse Brokers

Section 641 of the Tariff Act of 1930 provides the procedures applicable to customs brokers, including the issuance of licenses and permits; disciplinary actions, including penalties, suspension or revocation of a license or permit; and fees to defray the costs of the administration of this provision. The implementing bill's amendments to this provision are intended to permit the Customs Service and the importing community to communicate electronically and to allow brokers to modernize by using computer technology in their recordkeeping operations rather than requiring the paper retention of documents. Section 647 clarifies that the definition of "customs business" does not include the mere electronic transmission of data received for transmission to the Customs Service.

This section also allows the Customs Service to issue national and single district permits to licensed brokers. The Committee intends that national permits are to be used solely for "remote location filing" under the NCAP. The Committee intends that single

district permits will apply to brokers who do not participate in remote entry filing. The section also provides for the appointment of broker subagents so that brokers with single district permits may serve as subagents for nationally permitted brokers. The bill also permits brokers to limit their liability contractually to other persons in the conduct of customs business. This section also expands the time, from 15 days to 30 days, within which a hearing must be held after a broker is notified by the Customs Service that a suspension or revocation hearing will take place.

The Secretary of the Treasury is also authorized to prescribe regulations concerning the conversion of data to electronic retention media and the use of centralized record retention systems.

Section 649: Conforming Amendments

Section 649 makes technical and conforming amendments to sections 447 and 449 of the Tariff Act of 1930, which concerns the entry and unlading of vessels.

SUBTITLE C—MISCELLANEOUS AMENDMENTS TO THE TARIFF ACT OF 1930

Section 651: Administrative Exemptions

Current law (section 321 of the Tariff Act of 1930) authorizes the Secretary of the Treasury to exempt from duty certain articles that do not exceed specified dollar amounts. Section 651 of the implementing bill increases the statutorily specified dollar amounts that trigger eligibility for such administrative exemptions. Although the dollar amounts were adjusted in 1975, 1978, and 1983, they have not kept pace with inflation and the current amounts are not sufficiently high to permit the Secretary to meet the statutory goal of limiting expense to the Government disproportionate to the revenue that is collected. The implementing bill also adds a new provision that will allow the Customs Service to waive collection of duty where the duty is so low that the expense and resources required to process the entry are disproportionate to the revenue that would be collected.

Section 652: Report of Arrival

Section 433 of the Tariff Act of 1930 requires that arriving vessels, vehicles and aircraft be immediately reported, provides for the presentation to the Customs Service of necessary documents and prohibits the unauthorized departure of vessels, vehicles and aircraft and unauthorized discharge of passengers or merchandise. This section makes conforming amendments regarding hovering vessels and authorizes the electronic transmittal to the Customs Service of documents, papers, manifests, and other documents whose presentation is required by law.

Section 653: Entry of Vessels

Sections 434 and 435 of the Tariff Act of 1930 provide the vessel entry requirements applicable to American and foreign vessels, and also provide for formal entry at the customhouse within 48 hours of arrival from a foreign port or place. Section 653 of the implementing bill amends antiquated provisions which prescribe vessel

entry procedures with a degree of specificity that allows little or no administrative discretion. The implementing bill, by amending section 434 and repealing elsewhere in this bill section 435, consolidates in one section vessel entry requirements for American and foreign vessels. Under this section, the Secretary of the Treasury will have the authority to provide by regulation the specific procedures pertaining to vessel entry. These regulations will permit preliminary vessel entry in lieu of, or before, formal entry is made (preliminary entry is currently provided for in section 448 of the Tariff Act of 1930). This section also gives the Secretary authority to prescribe by regulation the place and the manner in which formal and preliminary vessel entries are to be made. This will authorize the Customs Service to permit formal or preliminary vessel entry to be made outside a designated port of entry. The implementing bill modifications also permit vessel entry to be made electronically.

Section 653 will also require the Customs Service, in permitting preliminary entry, to board a sufficient number of vessels to ensure compliance with the laws it enforces. It is the Committee's belief that a continuation of the Customs Service's current vessel boarding practices will aid that agency's enforcement efforts. The Committee is convinced that vessel boarding can, in certain circumstances, play an important role in detecting violations of the law. The Committee expects that, in the future and notwithstanding the Customs Service's increased reliance on electronic information processing, the Service will continue to board at least as many vessels as are currently boarded.

Section 654: Unlawful Return of Foreign Vessel Papers

Section 438 of the Tariff Act of 1930 provides for a penalty against a foreign consul who delivers vessel papers to a master of a foreign vessel before such master is able to produce a vessel clearance issued by the Customs Service. Section 654 makes technical conforming amendments.

Section 655: Vessels Not Required To Enter

Section 441 of the Tariff Act of 1930 provides a list of types of vessels which are not required to make entry at the customhouse when arriving in the United States. Section 655 of the implementing bill makes these exceptions applicable to the clearance requirements. The Committee believes that these changes are needed to make the law consistent with current Customs Service practice and with changes made to the report of arrival requirements by section 3111 of the Anti-Drug Abuse Act of 1986 (Public Law 99–570, 100 Stat. 3207). This section also provides that the following types of vessels will not be required to meet vessel entry and clearance requirements: (1) vessels carrying passengers on excursion from the U.S. Virgin Islands to the British Virgin Islands and returning; and (2) U.S. documented vessels with recreational endorsement or undocumented U.S. pleasure vessels not engaged in trade. If either of these types of vessels carries on board an article that is required to be entered, this section requires that such entry be reported immediately upon arrival, rather than after 24 hours as provided under current law.

Section 656: Unlading

Current law (section 448 of the Tariff Act of 1930) provides the requirements for obtaining a permit from the Customs Service prior to unlading merchandise, passengers or baggage; provides that preliminary entry may be made aboard vessels (but such does not excuse a vessel operator from making formal vessel entry at the customhouse); and provides that merchandise unladen under a permit must be retained at the place of unlading until the merchandise is entered (which must occur within 48 hours). Section 656 of the implementing bill removes from section 448 the authority for granting a preliminary entry. (It will be provided for in section 434 of the Tariff Act of 1930, the substantive provision on vessel entry.) This section also eliminates the requirement that a boarding officer must examine the manifest before preliminary entry. The Committee notes, however, that the Customs Service will still have the authority to board vessels, and the Committee expects that the Customs Service will do so with such frequency as is warranted to ensure the effective enforcement of U.S. customs, trade and drug laws. As noted elsewhere in this report, the Committee expects that the Customs Service will continue to board in the future approximately as many vessels as it currently boards because the Committee is convinced that boarding, in some circumstances, can contribute substantially to the enforcement efforts of the Customs Service.

This section also authorizes the Customs Service to transmit electronically to carriers permits that allow them to unlade merchandise. These permits will be transmitted pursuant to authorized electronic data interchange systems. Carriers will be obligated to notify the Customs Service of unladen merchandise where entry has not been made. Failure to so notify the Customs Service will subject the owner or master of the vessel or vehicle or his agent to a civil penalty not to exceed $1,000 for each bill of lading for which notice is not given, and that party will be responsible for the unladen merchandise until removed from his control in accordance with section 490 of the Tariff Act of 1930.

Section 657: Declarations

Section 485 of the Tariff Act of 1930 requires the importer of record to make a declaration under oath setting forth specified facts relating to the imported merchandise. Section 657 of the implementing bill authorizes transmittals to be made electronically and makes technical conforming amendments.

Section 658: General Orders

Current law (section 490 of the Tariff Act of 1930) requires the Customs Service to place general order (unclaimed) merchandise in a bonded warehouse at the expense of the consignee until entry can be made. Section 658 of the implementing bill eliminates a legal fiction by deleting the requirement that Customs Service officers take unentered merchandise into their custody and send it to a bonded warehouse; Customs officers do not actually take unentered merchandise into their custody. Instead, carriers will be required to notify a bonded warehouse of such unentered merchandise and the bonded warehouse shall arrange for the transportation of the

unentered merchandise to its premises for storage at the risk and expense of the consignee. This section also codifies current practice whereby merchandise that cannot be entered because of an incomplete entry is transported to a bonded warehouse. The amendments also recognize that incomplete entries may result from lack of adequate electronically transmitted information. This section also authorizes the Secretary of the Treasury to establish procedures governing incomplete entries of merchandise consigned to or owned by the U.S. Government.

Section 659: Unclaimed Merchandise

Under current law (section 491 of the Tariff Act of 1930), unclaimed merchandise shall be stored for a period of one year before it is considered abandoned to the Government and sold at a public auction. Section 659 of this bill reduces the waiting period from one year to six months. After six months in storage, the Customs Service may sell the merchandise at public auction or notify all known interested parties that, unless entered for consumption, title to the subject merchandise shall vest in the United States 30 days after such notice. If the latter option is exercised, the amendment vests title to the goods in the United States free and clear of any liens and encumbrances so that the Customs Service or a transferee of the merchandise receives clean title. It is the Committee's belief that these amendments will reduce storage and processing costs associated with unclaimed merchandise.

This section also allows the Government to retain the goods for official use or transfer them to any other Federal, State, or local agency in lieu of sale. All transfer and storage charges and expenses will be paid by the receiving agency. The rights of interested parties are protected in the same manner as if the goods were sold. Finally, the section provides that the Secretary may grant relief to parties who can establish they did not receive notice that title to the merchandise will vest in the United States unless entry of the merchandise is made. The Committee believes that these changes will streamline the disposition of unclaimed merchandise while providing appropriate safeguards for all interested parties.

Section 660: Destruction of Merchandise

Section 492 of the Tariff Act of 1930 provides that any merchandise that is abandoned or forfeited to the Government which is subject to internal revenue tax and which the appropriate Customs Service official determines will not sell for a sufficient amount to pay such tax, shall be destroyed instead of being sold at auction. Section 660 of the implementing bill gives the Customs Service the option to retain or otherwise dispose of the property, rather than requiring destruction in all cases where the proceeds of sale are insufficient to cover taxes. The Committee believes that these amendments will provide for the more efficient disposition of abandoned or forfeited merchandise.

Section 661: Proceeds of Sale

Section 493 of the Tariff Act of 1930 provides that the surplus of the proceeds of sale, after payment of storage charges, expenses,

duties, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited in the U.S. Treasury. Under section 661, a priority is established for the disposition of any surplus proceeds of sale. Under this section, proceeds from the sale of unclaimed merchandise are to be used first to pay outstanding duties, fees, and taxes due on such merchandise. Thereafter, surplus proceeds may be applied to offset the expenses of sale and other liens, and any remaining surplus proceeds will be deposited in the U.S. Treasury.

Section 662: Entry Under Regulations

Current law (section 498 of the Tariff Act of 1930) permits the Secretary of the Treasury to issue regulations relating to the procedures for informal entry. Section 662 raises the informal entry qualification amount from $1,250 to an amount prescribed by regulations, but not more than $2,500. This section also permits the Secretary to prescribe the dollar limit for the informal entry of certain articles of U.S. origin as specified in the statute. The Committee intends that these modifications will streamline the entry process for informal entries.

Section 663: American Trademarks

Section 526(e)(3) of the Tariff Act of 1930 provides that forfeited counterfeit trademark items shall be stored for a period of one year after the date of forfeiture before sale. Section 663 of the implementing bill reduces the storage period to 90 days to reduce storage costs to the Government and expedite the disposition of the forfeited merchandise.

Section 664: Simplified Recordkeeping for Merchandise Transported by Pipeline

Present law does not specifically provide for the transportation in bond of merchandise by pipeline. Present law governing transportation in bond generally (entry for immediate transportation and entry for transportation and exportation; sections 552 and 553 of the Tariff Act of 1930, respectively) does not permit the commingling of the merchandise transported.

Section 664 of the implementing bill permits accounting for merchandise in Customs Service custody (*i.e.,* bonded merchandise) moved by pipeline (thus, in most cases, commingled) on a quantitative basis. That is, if it is established (by a bill of lading or equivalent document of receipt, issued by the pipeline carrier) that a given quantity of the bonded merchandise entered the pipeline, the Customs Service may accept a bill of lading or equivalent document of receipt, issued by the pipeline carrier and accepted by the consignee as identifying a like quantity being withdrawn from the pipeline. All involved parties would be subject to applicable recordkeeping requirements under sections 508 and 509 of the Tariff Act of 1930.

Section 665: Entry for Warehouse

Under section 557(a) of the Tariff Act of 1930, merchandise withdrawn from a customs bonded warehouse is subject to entry and applicable duties, when withdrawn for consumption, at the time of

such withdrawal. Under section 309 of the Tariff Act of 1930, merchandise withdrawn from a customs bonded warehouse for loading as supplies on qualifying aircraft is considered to be exported.

At most major airports, different "lots" (*i.e.*, categories, such as imported, bonded and domestic) of fuel are commingled in common storage systems. The Customs Service considers withdrawal of fuel from storage tanks at airports to be withdrawal from bonding. In order for exports of the bonded merchandise (imported fuel then used on international flights) to qualify for the duty-free treatment granted under section 309, the Customs Service requires daily accounting of the commingled fuel, and payment of duties for non-exported fuel by the following day. Section 665 of the implementing bill permits accounting on a monthly basis for turbine fuel withdrawn from a customs bonded warehouse for use as supplies on qualifying aircraft. That is, if turbine fuel withdrawn from a customs bonded warehouse could be shown to have been used as supplies on qualifying aircraft within 30 days after withdrawal, the turbine fuel would not be subject to duty. Turbine fuel not shown to have been so used in this 30-day period would be subject to duty, which would be required to be deposited by the 40th day after withdrawal and subject to interest as of the date of withdrawal.

Section 666: Cartage

Section 565 of the Tariff Act of 1930 requires merchandise entered for warehousing to be transported by a cartman licensed by the Customs Service, because the merchandise has not been released from Customs Service custody.

Section 666 of the implementing bill adds bonded carriers to the list of persons eligible to cart merchandise within the limits of a port. Under section 551 of the Tariff Act of 1930, bonded carriers may currently transport bonded merchandise between ports. The implementing bill eliminates the anomaly of separating intraport transportation from interport transportation. The Secretary has authority under the bonded carrier and cartage statutes to determine the eligibility of applicants for either category. This provision will result in savings of time and money for both the trade and Customs.

Section 667: Seizure

Section 612(b) of the Tariff Act of 1930 provides that if the expense of storing a seized conveyance or merchandise is disproportionate to its value, and the value is less than $1,000, the Customs Service may order its destruction. Section 666 of the implementing bill eliminates the requirement that the seized conveyance or merchandise must be less than $1,000 before it can be destroyed pursuant to this provision. The Committee believes that this will reduce storage costs by permitting destruction of merchandise in all cases where the expense of keeping the vessel, vehicle, aircraft, merchandise or baggage is disproportionate to its value. This section also provides that no Customs Service officer shall be liable for the destruction or other disposition of property pursuant to this statute.

Section 668: Limitation on Actions

Section 621 of the Tariff Act of 1930 provides for a five-year statute of limitations for civil actions involving pecuniary penalties and forfeiture of property under the Customs laws. In order to provide importers with certainty regarding the extent of their liability for lawful duties, section 668 of the implementing bill creates a statute of limitations for the recovery of lawful duties of which the United States was deprived as a result of a violation of section 592 or 593A of the Tariff Act of 1930. The Committee intends that the Government initiate suit promptly or be foreclosed from recovering the duties.

Section 669: Collection of Fees on Behalf of Other Agencies

There is no provision in current law that requires other Government agencies to reimburse the Customs Service for the expenses it incurs in collecting fees on behalf of these Government agencies. Section 669 of the implementing bill creates a new provision, section 529 of the Tariff Act of 1930, which will require other agencies to reimburse the Customs Service for such expenses. The amounts reimbursed to the Customs Service shall come from the fees collected. This will ensure that the Customs Service recovers the costs incurred in administering fee collection programs on behalf of other Government agencies. The Committee believes that this requirement is needed to provide the Customs Service with additional resources for revenue collection. However, the Committee believes that the Customs Service should make a good faith effort to collect all duties, taxes and fees without regard to the likelihood of reimbursement.

Section 670: Authority To Settle Claims

Because of concerns that the Customs Service has little incentive to avoid damaging cargo during examinations, the Committee believes that it is necessary to enact legislation to provide recourse or compensation to importers whose merchandise is unnecessarily damaged during the course of an examination. Section 670 creates a new provision, section 630 of the Tariff Act of 1930, which grants the Secretary of the Treasury authority to settle claims for less than $50,000 against certain Customs Service employees who, while acting within the scope of their employment, cause damage to or loss of privately owned personal property. The statute will not apply to damage to commercial property, claims presented more than one year after the harm occurs, or if presented by a Government employee acting within the scope of employment. As provided in section 685 of the implementing bill, claims will be paid out of the Treasury Forfeiture Fund.

Section 671: Use of Private Collection Agencies

The Committee believes that the Customs Service should be granted the authority, as a last resort, to contract with private collection agencies to attempt to recover the indebtedness which the agency currently writes off as uncollectible. Section 671 creates a new provision, section 631 of the Tariff Act of 1930, which allows the Secretary of the Treasury to contract with private agencies for collection services to recover indebtedness arising under the cus-

toms laws, provided that the private collection agencies are employed only after the Customs Service exhausts all administrative efforts to collect the indebtedness. The Customs Service must continue to attempt collection through applicable surety bonds prior to utilizing a private collection agency. The Secretary of the Treasury will retain authority to settle any claims or refer the matter to the Department of Justice for litigation. Finally, the private collection agency will be subject to the Freedom of Information Act (5 U.S.C. 552 et seq.) and all Federal and State laws and regulations related to debt collection practices.

SUBTITLE D—MISCELLANEOUS PROVISIONS AND CONSEQUENTIAL AND CONFORMING AMENDMENTS TO OTHER LAWS

Section 681: Amendments to the HTSUS

Under present regulations, shipments which leave the United States and are undeliverable to the country of destination (without having left the custody of the carrier or foreign customs service) are considered exports and have to be "re-entered" into the United States as imports. The Committee regards these entry requirements as unnecessary and section 681 of the implementing bill provides that such returned shipments will be exempt from entry requirements.

Current regulations also provide that rail equipment brought into the United States from Canada, while not subject to duty, is subject to entry requirements. Section 681 eliminates the entry requirements for rail cars and locomotives on which no duty is owed. This section authorizes the Secretary of the Treasury to impose reporting and bonding requirements to ensure that no duty is owed on rail cars brought into the United States without being entered and to develop regulations requiring the submission by railroads, equipment owners, and lessors of information demonstrating the rail equipment's eligibility for duty-free treatment. In addition, section 681 authorizes the Secretary to establish bonding requirements for companies to protect against rail equipment subject to a tariff from being brought into the United States without payment of duty.

This provision is intended to remove entry requirements that impede the use of Canadian freight cars and locomotives under the terms of the CFTA. While U.S. duties have been removed on most Canadian rail equipment, the Committee is concerned that railroads have been unable to take full advantage of the tariff removal because of the entry requirements. The Committee believes that entry of freight cars is impractical because the decision to use a freight car for domestic service, which would require entry, would be made after a rail car has crossed the border and been unloaded. The Committee understands that the entry requirements on locomotives and rail cars have been burdensome since equipment repeatedly crossing the border for subsequent use in domestic service in the United States must be entered each time. In developing the eligibility and bonding requirements described above, the Committee urges the Secretary to work closely with the railroads, equipment owners and lessors. The Committee is concerned that the Sec-

retary not substitute new entry requirements for the old requirements or issue regulations that will make compliance difficult.

Under present regulations, instruments of international traffic, such as containers, rail cars and locomotives, truck cabs, and trailers, are exempt from formal entry procedures required of all merchandise entering the United States. This section of the implementing bill provides for the statutory exemption of these instruments from formal entry procedures. These instruments would be required to be accounted for when imported and exported into and out of the United States, respectively, through the manifesting procedures required of all international carriers with U.S. Customs. Fees associated with the importation of these instruments would be reported and paid on a periodic basis based on regulations issued by the Secretary of the Treasury and in accordance with international conventions on instruments of international traffic. The Committee intends that these privileges are to be extended to instruments of international traffic only when they are imported, and only so long as they are used, in international traffic. If they are imported for other use, or if they are diverted in the United States from use in international traffic, they are subject to the ordinary requirements for a consumption entry, duties and applicable fees.

Section 682: Customs Personnel Airport Work Shift Regulation

Under current law, the Customs Service is required to consult with the Treasury-level Advisory Committee on Commercial Operations (COAC) prior to implementing changes of inspectional work shifts at airports. In some cases, this requirement has hampered the ability of the Customs Service to respond quickly and efficiently to changes in workloads at international airports. In some cases, after the need for a shift change becomes evident a full calendar quarter may elapse before the change can be implemented. To prepare for the quarterly COAC review, the Customs Service currently has to poll its field offices before each meeting to obtain details on inspectional shift changes at every international airport in the country.

Section 682 of the implementing bill repeals the consultation requirement with the COAC. The Committee believes that the elimination of the consultation requirement will enable a more rapid and efficient response at the local level to the need for shift changes.

Section 683: Use of Harbor Maintenance Trust Fund Amounts for Administrative Expenses

The Internal Revenue Code of 1986, as amended, provides in section 9505(c) that amounts in the Harbor Maintenance Trust Fund ("Trust Fund") are available, as provided by appropriation Acts, for making expenditures:

(1) under section 210(a) of the Water Resources Development Act of 1986 (Corps of Engineers costs for dredging and maintaining harbors at U.S. ports);

(2) for payments of rebates of certain St. Lawrence Seaway tolls or charges; and

(3) for payment of expenses incurred by the Department of the Treasury in administering the harbor maintenance excise

tax ("harbor tax") (but no more than $5 million per fiscal year) for periods during which no Customs merchandise processing fee applies under paragraph (9) or (10) of section 13031(a) of the COBRA.

The Customs merchandise processing fee was extended for three years by the Omnibus Budget Reconciliation Act of 1993 through September 30, 1998. Thus, since the Customs processing fee is currently in effect under COBRA, the Trust Fund is not permitted to be used for Department of the Treasury expenses for administering the harbor tax. The Customs Service generally has the responsibility for collecting and administering the harbor tax. The Corps of Engineers and the Department of Commerce generate certain data related to shipments of commercial cargo.

The Committee believes that additional enforcement resources are necessary for the Department of the Treasury to properly administer the harbor tax and to increase collection and audit efforts. This increased enforcement effort should result in the collection of additional tax revenues that are owed but are not being paid. Also, the Committee has determined that the Corps of Engineers and the Department of Commerce should be reimbursed for their expenses related to administering the harbor tax.

Section 683 of the implementing bill amends section 9505(c) to allow (subject to appropriations) up to $5 million per fiscal year from the Trust Fund to be used by the Department of the Treasury in administering the harbor tax to improve compliance. This is accomplished by removing the current Trust Fund restriction against such use while the Customs merchandise processing fee is in effect. Section 683 also specifies that such Trust Fund amounts are available to be used to reimburse the Corps of Engineers and the Department of Commerce for their administrative expenses related to harbor tax collection and enforcement efforts.

Section 684: Amendments to Title 28, United States Code

In order to implement elements of the programs established for accreditation of and assessment of penalties on customs laboratories and the adjudication of the penalty provisions related to duty drawback, section 684 of the implementing bill makes a number of conforming changes to Title 28. 28 U.S.C. 1581 sets forth the actions in which the CIT is granted exclusive subject matter jurisdiction. Section 684 amends 28 U.S.C. 1581 to provide exclusive jurisdiction to the CIT with respect to any decision or order of the Customs Service to deny, suspend, or revoke accreditation of private laboratories. Currently, 28 U.S.C. 2631 sets forth the persons entitled to commence specified civil actions in the CIT. Section 684 amends that section of Title 28 to provide standing to commence a civil action to persons whose private laboratory accreditation was denied, suspended, or revoked by the Customs Service.

28 U.S.C. 2636 sets forth the time for commencement of specified actions in the CIT. Section 684 of the implementing bill provides that a civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation is barred unless commenced within 60 days after the date of the Customs Service decision or order and in accordance with the rules of the CIT. 28 U.S.C. 2640 sets forth the scope and standard of review

of the CIT; section 684 of the implementing bill amends this section to provide that in any civil action commenced to review an order or decision by the Customs Service with respect to denial, suspension, or revocation of the accreditation of a private laboratory, the Court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order. 28 U.S.C. 2642 authorizes the CIT to order an analysis of imported merchandise by U.S. agency laboratories. Section 684 expands the authorization by permitting the CIT to order reports of laboratories accredited by the Customs Service, in addition to ordering an analysis of imported merchandise.

Section 684 also amends 28 U.S.C. 1582(1) to expand the jurisdiction of the CIT to adjudicate drawback penalty provisions and amends 28 U.S.C. 2635(a) to provide for the filing of official documents with the CIT. With respect to the filing of documents with the CIT, the Committee believes that the Court should be provided with maximum flexibility to respond to the changes that have arisen and will continue to arise from the new automated and electronic system for processing commercial importations. This will permit the Court to respond promptly to unanticipated problems by exercising its rulemaking authority. The Court, after receiving recommendations from its advisory committees, will be able to prescribe rules regarding such matters as the information transmitted to the court; the manner and medium of the transmittal; the timing of the transmittal; and any other issue relating to the provision of the information necessary to ensure well-informed judicial review.

Section 685: Treasury Forfeiture Fund

The Treasury Forfeiture Fund is codified at 31 U.S.C. 9703; it replaced the Customs Forfeiture Fund, 19 U.S.C. 1613b. The proceeds of seizures and forfeitures are deposited into the Fund and subsequently allocated to cover certain Government expenses explicitly enumerated in the statute. This section of the implementing bill makes conforming amendments to the Treasury Forfeiture Fund regarding the payment of claims against Customs Service employees. Section 685 also permits, but does not require (as does current law), that excess monies in the Fund be invested in U.S. obligations.

Section 686: Amendments to the Revised Statutes of the United States

Section 4197 of the Revised Statutes, as amended (46 U.S.C. App. 91) provides the vessel clearance requirements for any vessel bound to a foreign port. Section 686 of the implementing bill amends section 4197 by consolidating the provision relating to vessel clearance and the departure provision of the permit-to-proceed requirements now found in section 443 of the Tariff Act of 1930 and 46 U.S.C. App. 313. Section 4197 will continue to contain the basic requirements for clearance and will be the counterpart to the basic vessel entry statute (section 434 of the Tariff Act of 1930, as amended). Penalties for violations of section 4197 will be provided in section 436 of the Tariff Act of 1930.

Section 686 of the implementing bill also provides that a vessel departing from a port or place in the United States bound outside

the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea will be required to obtain Customs Service clearance. Furthermore, this section will give the Secretary authority to prescribe by regulation the manner in which clearance is to be obtained, including the documents, data, or information which must be submitted or electronically transmitted to obtain the clearance. This section will continue to permit, under certain circumstances, the granting of clearance before all of the requirements for clearance have been complied with. This section also authorizes the Customs Service to permit clearance to be obtained outside a designated port of entry.

This section also includes amendments to sections 2793, 3126, 3127, 4136, and 4336 of the Revised Statutes, as amended, that delete obsolete portions of those provisions. These sections contain various provisions relating to the entry and clearance of vessels.

Section 687: Amendments to Title 18, United States Code

18 U.S.C. 965(a) imposes certain requirements on masters of vessels in connection with the delivery of cargo during times of war when the United States is a neutral party. Section 687 of the implementing bill adopts conforming amendments required by enactment of this legislation, along with amendments that correct outdated provisions.

Section 688: Amendment to the Act To Prevent Pollution From Ships

Current law (33 U.S.C. 1908(e)) authorizes the Secretary of the Treasury to revoke certain clearance and permit rights for ships subject to the MARCOL Protocol found to be liable for pollution-related violations. Section 688 of the implementing bill provides technical amendments required by this legislation, as well as amendments that correct outdated provisions.

Section 689: Miscellaneous Technical Amendments

Section 689 adopts conforming amendments and makes technical changes to the Act of October 3, 1913 (19 U.S.C. 128 and 19 U.S.C. 131) and to the Act of August 5, 1935 (19 U.S.C. 1704). These Acts contain various provisions regarding entry of foreign vessels and goods imported by such vessels.

The Customs Service is authorized, under the Act of November 6, 1966 (46 U.S.C. App. 817d(e) and 817(e)), to refuse departure or clearance for vessels that are not in compliance with provisions governing the financial responsibility of owners and charterers for death or injury to passengers or other persons and for indemnification of passengers for non-performance of transportation. Section 689 adopts necessary conforming amendments and amendments to correct outdated provisions.

Section 690: Repeal of Obsolete Provisions of Law

This section of the implementing bill repeals a number of obsolete provisions of law.

Section 691: Reports to Congress

In order to address concerns with current compliance levels and the potential adverse impact that improved facilitation could have on the compliance efforts of the Customs Service, section 691 requires the Secretary of the Treasury to submit to the Congress reports concerning the collection of duties imposed under the antidumping and countervailing duty laws for entries liquidated after the effective date of this legislation and the total amount of Central Examination Stations fees collected nationwide annually and on the variations in such fees among Customs districts.

This section of the implementing bill also requires the Secretary of the Treasury to establish a Customs Compliance Program to assess the level of compliance with the laws enforced by the Customs Service. The Committee believes that compliance monitoring is best achieved by creating an objective, statistically based method of measurement. The Commissioner of Customs will also be required to initiate a compliance review of courier services operating under Part 128 of Title 19 of the Code of Federal Regulations and submit a report to the Congress on the results of the review. It is the Committee's intention that this review focus exclusively on the activities of the "on-board" couriers since there have been allegations of questionable compliance with the regulations.

Section 692: Effective Date

Section 692 provides that this title shall take effect on the date of the enactment of the Act.

As a final matter, the Committee notes that there have been complaints from brokers that they do not get a fair and impartial hearing at the Headquarters level in broker penalty and liquidated damages claims. It is the Committee's intent that the Customs Service will continue its study of the procedures relating to these claims, especially with regard to the issue of the sufficiency of due process.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee on Finance states that the bill was ordered favorably reported by a vote of 16 to 4.

REGULATORY IMPACT OF THE BILL

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

PART II. REPORT OF THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

The Committee on Agriculture, Nutrition, and Forestry to which was referred the bill S. 1627, having considered the same, reports favorably thereon and recommends that the bill do pass.

BRIEF EXPLANATION

The implementing bill makes necessary or appropriate changes in law to implement the North American Free Trade Agreement. The major provisions of the bill considered by the Committee on Agriculture, Nutrition, and Forestry are briefly described below.

The bill amends section 22 of the Agricultural Adjustment Act to authorize the President, pursuant to Article 309 and Annex 703.2 of the Agreement, to exempt any "qualifying good" from Mexico from import restrictions imposed under section 22.

The United States will convert its import quotas under section 22 of the Agricultural Adjustment Act to tariff rate quotas for imports from Mexico of dairy products, cotton, sugar-containing products and peanuts.

The bill directs the President to take such action as may be necessary to ensure that imports of goods subject to the tariff rate quotas established by the Agreement do not disrupt the orderly marketing of commodities in the United States.

The bill includes measures to ensure compliance with existing provisions concerning reentry of exported additional peanuts. In addition, the sense of Congress is expressed that the United States should request consultations with Mexico if imports of peanuts exceed the in-quota quantity of Mexican peanuts established under the Agreement.

The bill requires the Secretary of Agriculture to collect and compile certain information for fresh fruits and vegetables, processed citrus products, and cut flowers, and to designate an office to maintain and disseminate this information.

The bill establishes an end-use certificate requirement for wheat and barley imported by the United States from countries with similar requirements. The purpose of the U.S. end-use certificate requirement is to ensure that foreign agricultural commodities do not benefit from U.S. export programs.

The bill authorizes a fellowship program for individuals from other NAFTA countries to study agriculture in the United States, and for individuals in the United States to study agriculture in other NAFTA countries.

The bill authorizes the Secretary of Agriculture, subject to appropriation, to make available up to $20 million per year in grants to tax-exempt entities with experience in providing services to low-income migrant or seasonal farm workers, if NAFTA is determined to have caused such workers to lose income.

The bill requires the Secretary of agriculture to submit a biennial report on the effects of NAFTA on U.S. agricultural producers and rural communities, with the first report due March 1, 1997.

The bill amends Title IV of the Trade Agreements Act of 1979 to add a new subtitle concerning standards and measures under the Agreement. Chapter 1 of the new subtitle contains provisions to implement Section B of NAFTA Chapter 7.

The bill provides a conforming change to amend the Federal Seed Act to remove the staining requirement for alfalfa and clover seed imported from Mexico.

The bill removes a blanket prohibition on the importation of animals which are diseased, infected with any disease, or which have been exposed to infection within 60 days prior to their exportation to the United States. The provision does not require the Secretary of Agriculture to permit the importation of such animals, but it permits the Secretary to specify those circumstances in which such animals may be imported.

The bill authorizes the Secretary of Agriculture to promulgate regulations to permit the Secretary to waive certain regulations regarding shipments of ruminants and swine between the United States and Canada or Mexico.

The bill authorizes the Secretary of Agriculture to permit the importation of livestock and meat from regions of countries that are, and are likely to remain, free of foot-and-mouth disease and rinderpest. A similar provision allows the Secretary to permit the importation of honeybees or honeybee semen from regions of Canada and Mexico that are free of diseases, harmful parasites, and undesirable honeybee species or subspecies.

The bill amends the Poultry Products Inspection Act to implement NAFTA Article 714(2) on equivalence. The provision permits imports of poultry and poultry products from Canada or Mexico if they are processed in facilities and under conditions that meet standards equivalent to U.S. standards.

Likewise, the bill amends the Federal Meat Inspection Act to implement NAFTA Article 714(2) on equivalence. The provisions permit the importation from Canada or Mexico of meat, carcasses, and meat products upon certification that plants in Canada or Mexico have complied with requirements equivalent to the applicable U.S. requirements.

The bill requires that peanut butter and peanut paste be processed from peanuts meeting the standards of Marketing Agreement No. 146, except that imported peanut butter and peanut paste may, alternatively, comply with sanitary measures that provide at least the same level of sanitary protection.

The bill authorizes the Secretary of Agriculture, subject to appropriation, to make a grant to construct the "Southwest Regional Animal Health Biocontainment Facility" to conduct research in animal health and certain other biocontainment matters.

The bill mandates an annual report by the Secretary of Agriculture on the impact of NAFTA with respect to the inspection of imported meat poultry, other foods, animals and plants.

PURPOSE AND NEED

S. 1627 approves and implements the North American Free Trade Agreement negotiated by the United States with Mexico and Canada.

The implementing bill makes certain changes in United States law that are necessary or appropriate to implement the Agreement. This report discusses section 321(b) through (i), section 351, and section 361 of the implementing bill.

Most changes in United States law and regulation implementing the Agreement will apply only with respect to Mexico and Canada. United States law and practice with respect to other countries, their nationals, and firms will generally be left undisturbed.

Many provisions of the Agreement will not require any change in United States law or administrative procedure. Where United States law affords discretion to comply with the Agreement, the implementing agency will exercise its discretion in a manner consistent with the Agreement. In addition, some provisions of the Agreement impose obligations only on Mexico or Canada.

COMMITTEE CONSIDERATION

The Committee held a hearing on September 21, 1993, to discuss the implications of the proposed North American Free Trade Agreement.

Witnesses at the hearing included: Mickey Kantor, United States Trade Representative; Mike Espy, Secretary, United States Department of Agriculture; Bob Foster, Vice Chairman of the Board of Directors, Agrimark, Inc.; Leland Swenson, President, National Farmers Union; Mike Bauerle, Immediate Past Chairman, Nebraska Corn Development, Utilization, and Marketing Board; Dean Kleckner, President, American Farm Bureau Federation; Martha Roberts, Deputy Commissioner for Food Safety, Florida Department of Agriculture and Consumer Services; and Roger Stuber, President, National Cattlemen's Association.

The Committee met on November 18, 1993, and favorably reported section 321(b) through (i), section 351, and section 361 of the implementing legislation, S. 1627, by voice vote. Senators Heflin, Feingold, and Conrad asked to be recorded as voting no.

ROLL CALL VOTES

In accordance with paragraphs 7(b) of Rule XXVI of the Standing Rules of the Senate, it is announced that no roll call votes were taken with respect to Committee action on S. 1627.

SECTION-BY-SECTION ANALYSIS

Section 321: Agriculture

Section 321(b) Section 22 of the Agricultural Adjustment Act

Section 321(b) of the implementing bill authorizes the President, pursuant to Article 309 and Annex 703.2 of the NAFTA, to exempt any article which originates from Mexico from any quantitative limitation or fee imposed pursuant to section 22 of the Agricultural

Adjustment Act (7 U.S.C. 624), for so long as Mexico is a NAFTA country.

Section 321(c) Tariff Rate Quotas

Section 321(c) of the bill directs the President to take such action as may be necessary to ensure that imports of goods subject to tariff rate quotas do not disrupt the orderly marketing of commodities in the United States. Article 302(4) of the NAFTA permits the allocation of the in-quota quantity under these tariff rate quotas, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota. This provision will be implemented consistent with NAFTA Article 302(4). Any agency action pursuant to this provision will be taken in accordance with regulations promulgated after providing notice and opportunity for public comment.

Section 321(d) Peanuts

Section 321(d)(1) affirms that nothing in the Agreement or Act eliminates standard requirements for peanuts in the domestic market under Marketing Agreement No. 146.

Section 321(d)(2) affirms that nothing in the NAFTA or the implementing legislation affects the penalty applicable to an importer if any additional peanuts exported by a handler are reentered into the United States in commercial quantities. It also requires peanut importers to maintain such records and documents as the Secretary of Agriculture may require to ensure compliance with the provision concerning reentry of exported additional peanuts.

Section 321(d)(3) sets forth the sense of Congress that the United States should request consultations pursuant to the import surge supplemental agreement if imports of peanuts are entering at amounts in excess of the in-quota quantity established in the U.S. NAFTA Tariff Schedule for Mexican peanuts. The consultations would concern the question of injury to the domestic peanut industry and whether recourse to emergency action under either the NAFTA or GATT safeguard provisions is appropriate.

Section 321(e) Information Regarding Fresh Fruits, Vegetables, Citrus and Cut Flowers

Section 321(e) requires the Secretary of Agriculture to collect and compile certain information, if reasonably available, from United States and Mexican governmental agencies on fresh fruits and vegetables, processed citrus products and cut flowers. The Secretary is also to designate an office to maintain and disseminate this information.

Section 321(f) End-Use Certificates

Section 321(f) is intended to reflect the compromise language agreed by conferees to H.R. 2264, the Omnibus Budget Reconciliation Act of 1993. The following reflects the Statement of Managers that was to accompany section 1403 of H.R. 2264:

Section 321(f) of the bill is a free-standing provision that establishes an end-use certificate requirement for the following: (1) wheat imported into the United States from any foreign country or instrumentality that requires, as of the effective date of the sub-

section, end-use certificates on United States-produced wheat; and (2) barley imported into the United States from any foreign country or instrumentality that requires, as of the effective date of the subsection, end-use certificates on United States-produced barley. The purpose of the U.S. end-use certificate requirement is to ensure that foreign agricultural commodities are not used in U.S. export programs.

The Committee intends that the term "end-use" shall include the following: (1) exporting from the United States without the benefit of the Export Enhancement Program, export credit guarantee (GSM) program, and P.L. 480 according to procedures established in existing United States law; (2) feeding to livestock; (3) first stage processing for human consumption or industrial uses; and (4) other uses as determined by the Secretary of Agriculture. Commingling with like types of United States grains should not be considered an end use. The Committee intends that the certificate remain current and follow the commingled grain until its end-use. For foreign grain intended for multiple end users, each portion of the grain must be accompanied by an end use certificate until it reaches its end use.

The Committee intends that the Secretary of Agriculture shall prescribe by regulation such requirements regarding the information to be included in end-use certificates as may be necessary and appropriate such as the class, quantity, and country of origin of the covered commodity; importer and initial consignee of the commodity; and the end-use, if known at the time of importation of the commodity. Any transfers from the importer, initial consignee, or any subsequent consignee shall be documented on the end-use certificate. The Secretary may prescribe procedures, such as periodic reporting, as are necessary to ensure proper oversight of this section. The Secretary is expected to take all appropriate action to protect any business confidential information. The Secretary will ensure that end-use certificate forms will be made freely available to importers.

In order to protect United States agricultural producers, the Secretary may, after consulting with Congress and after consultation with producers and producer groups, suspend end-use certificate requirements if the requirements have directly resulted in: (1) the reduction of income to U.S. producers of agricultural commodities; or (2) the reduction of competitiveness of U.S. agricultural commodities in world export markets. In consulting with producers and producer groups prior to a suspension determination, the Secretary is expected to fully consider producers' views and concerns.

If a foreign country or instrumentality that requires end-use certificates for imports of U.S.-produced wheat as of the effective date of the subsection, eliminates this requirement, the Secretary is to suspend the U.S. end-use certificate requirement on wheat, effective 30 calendar days after the suspension by the foreign country or instrumentality. If a foreign country or instrumentality that requires end-use certificates for imports of U.S.-produced barley as of the effective date of the subsection, eliminates this requirement, the Secretary is to suspend the U.S. end-use certificate requirement on barley, effective 30 calendar days after the suspension by the foreign country or instrumentality.

The Secretary is required to submit a report to Congress detailing the reasons, including supporting data and analysis, for his determination to suspend, pursuant to paragraph 321(f)(3), requirements for end-use certificates.

Any person required to use an end-use certificate shall be subject to section 1001 of Title 18, United States Code if found to be engaging in fraud with respect to, or knowingly violating, the provisions in this section or regulations that implement this section.

The requirements of this section shall be effective 120 days after the date of implementation of this Act.

Section 321(g) Agricultural Fellowship Program

Section 321(g) of the bill authorizes a new fellowship program under which the Secretary of Agriculture will provide fellowships to individuals from other NAFTA countries to study agriculture in the United States and to individuals in the United States to study agriculture in other NAFTA countries.

Section 321(h) Assistance for Affected Farm Workers

Section 321(h) of the bill authorizes the Secretary of Agriculture, subject to appropriation, to make available up to $20 million per fiscal year in grants to tax-exempt entities that have experience in providing emergency services to low-income migrant or seasonal farm workers. The Secretary must first determine, however, that the NAFTA has caused such workers to lose income.

Section 321(i) Biennial Report on Effects of NAFTA

Section 321(i) of the bill requires the Secretary of Agriculture to submit a report every two years on the effects of NAFTA on U.S. agricultural producers and rural communities, beginning March 1, 1997. The requirement expires with the report due on March 1, 2011. The bill requires the report to assess the effects of the NAFTA on: (1) a commodity-by-commodity basis; (2) agricultural investments; (3) rural communities; and (4) agricultural employment. The Secretary may also include other appropriate information and data.

Section 351: Sanitary and Phytosanitary Measures

Section 351 of the implementing bill amends Title IV of the Trade Agreements Act of 1979 to add a new subtitle concerning standards and measures under the NAFTA. Chapter 1 of the new subtitle contains provisions to implement Section B of NAFTA Chapter Seven.

Title IV of the Trade Agreements Act of 1979 was enacted to implement the Tokyo Round Standards Code. Federal agencies have been subject to the requirements of Title IV since 1980. These existing provisions continue to apply to standards activities of federal agencies, which includes some of the standards-related measures under the NAFTA. However, the definitions and coverage of Chapter Seven differ from the definitions and coverage of the Standards Code, so it was necessary to provide separate legislative provisions in the Trade Agreements Act of 1979 to implement Chapter Seven.

Section 461 of the new subtitle states that no Federal or State agency engaging in activities relating to sanitary or phytosanitary

measures are in any way limited in protecting human, animal, or plant life.

Section 462 of the new subtitle assigns to the standards information center established under section 414 of the Trade Agreements Act of 1979 additional duties regarding (1) any sanitary or phytosanitary measures of general application; (2) procedures and factors of any federal or State agency regarding risk assessment; (3) disseminating information regarding international, regional, or national sanitary or phytosanitary organizations and systems. The National Institute of Standards and Technology (NIST) under the Department of Commerce currently serves as the standards information center.

Section 463 of the new subtitle provides definitions of the terms used in chapter 2 of the new subtitle. These definitions are drawn from the definitions in the NAFTA. The definitions of "standard" and "technical regulation" are taken from the notes to Article 724 agreed to by the NAFTA countries set out after Chapter Twenty-Two of the NAFTA.

Section 361: Agricultural Technical and Conforming Changes

Section 361(a) Federal Seed Act

Section 361(a) of the bill provides a conforming change to amend the Federal Seed Act to remove the staining requirement for alfalfa and clover seed imported from Mexico. The CFTA Implementing Act made a similar conforming change to implement the CFTA.

Section 361(b) Importation of Animals

Section 361(b) of the bill amends section 6 of the Act of August 30, 1890, to authorize the Secretary of Agriculture, in accordance with such regulations as the Secretary may promulgate, to permit the importation of cattle, sheep, and other ruminants and swine, which are diseased or infected with any disease, or which have been exposed to such infection within 60 days prior to their exportation to the United States. This provision does not require the Secretary to permit the importation of such animals. The law had prohibited the entry of such animals, with a few limited exceptions, but a prohibition on importation from Mexico and Canada may not be needed for animal health purposes in all instances, nor may animal health concerns necessitate limiting imports from Mexico of certain cattle only to the state of Texas. Accordingly, the bill permits the Secretary to specify those circumstances in which such animals may be imported.

Section 361(c) Inspection of Animals

Section 361(c) of the bill amends section 10 of the same act to authorize the Secretary to promulgate regulations to permit the Secretary to waive certain requirements regarding shipments of ruminants and swine between the United States and Canada or Mexico.

Section 361(d) Disease-free Countries or Regions

Section 361(d)(1) of the bill amends section 306 of the Tariff Act of 1930 to implement NAFTA Article 716 regarding adaptation to

regional conditions. The bill authorizes the Secretary to permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of ruminants and swine and the fresh, chilled and frozen meat of such animals from regions of countries that are, and are likely to remain, free of foot-and-mouth disease and rinderpest. This provision does not require the Secretary to permit the entry of such goods but merely authorizes the Secretary to determine the appropriate terms and conditions for such entry.

Section 361(d)(2) of the bill amends the Honeybee Act to implement NAFTA Article 716. This provision permits the importation of honeybees and honeybee semen from regions of Canada and Mexico that are free of diseases or parasites harmful to honeybees and undesirable species or subspecies of honeybees.

Section 361(e) and (f) Poultry and Meat Inspection

Sections 361(e) and (f) of the bill amend, respectively, section 17(d) of the Poultry Products Inspection Act and section 20(e) of the Federal Meat Inspection Act to implement NAFTA Article 714(2) on equivalence. With respect to poultry and poultry parts and products, these provisions permit the importation from Canada or Mexico of such goods capable of use as human food if they are processed in facilities and under conditions that meet standards that are equivalent to U.S. standards. With respect to meat, carcasses and meat products, the bill would permit the importation from Canada or Mexico of such goods upon certification by the Secretary that plants in Canada or Mexico have complied with requirements equivalent to the applicable U.S. requirements.

The bill specifically authorizes the Secretary to treat an applicable standard of Canada or Mexico as equivalent to a U.S. standard or requirement if the exporting country provides the Secretary with scientific evidence or other information, in accordance with mutually agreed risk assessment methodologies, to demonstrate that the foreign standard achieves the level of protection that the Secretary deems appropriate. The Secretary remains free to determine, on a scientific basis, that the foreign standard does not achieve that level of protection.

Section 361(g) Peanut Butter and Peanut Paste

Section 361(g) establishes requirements for peanut butter and peanut paste in the domestic market. Peanut butter and peanut paste must be processed from peanuts meeting the standards of Marketing Agreement No. 146, except that imported peanut butter and peanut paste may, as an alternative, comply with sanitary measures that provide at least the same level of sanitary protection as is achieved by peanut butter or peanut paste processed from peanuts meetings the standards of Marketing Agreement No. 146. This provision is included to provide additional protection from risks associated with aflatoxin.

Section 361(h) Animal Health Biocontainment Facility

Section 361(h) of the bill authorizes the Secretary of Agriculture, subject to appropriation, to make a grant to a land grant college or university, located in a state adjacent to Mexico, that the Secretary determines has an established program in animal health re-

search and education and a collaborative relationship with a Mexican university or veterinary school. The grant is for the construction of the "Southwest Regional Animal Health Biocontainment Facility," to conduct research in animal health and certain other biocontainment matters. In light of the increased U.S.-Mexico trade expected under the NAFTA, this facility will help to ensure the protection of animal and plant life and health in the border area.

Section 361(i) Inspection Reports

Section 361(i) of the bill mandates an annual report by the Secretary of Agriculture, in addition to the biennial report required pursuant to section 321(i), on the impact of NAFTA with respect to inspection of commercially significant quantities of imported meat, poultry, other foods, animals and plants into the United States. These reports are required beginning January 31, 1995, through 2004. The Secretary will consult with other appropriate agencies in preparation of the annual report.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee made the following evaluation of the regulatory impact which would be incurred in carrying out S. 1627.

The bill creates several new authorities and programs. Under the bill, several existing programs are modified for the purpose of implementing the Agreement.

The bill creates some additional regulatory requirements. For example, regulations will be necessary to implement the end use certificates authorized in Section 321(f).

The bill could result in some additional paperwork and recordkeeping requirements, such as with respect to the reports required by Sections 321(i) and 361(i).

PART III. REPORT OF THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

At its executive session on Thursday, November 18, 1993, the Committee on Commerce, Science, and Transportation considered the portions of S. 1627, legislation to implement the North American Free Trade Agreement (NAFTA), within the jurisdiction of the Committee, and ordered them reported without recommendation.

SUMMARY OF PROVISIONS WITHIN THE JURISDICTION OF THE COMMERCE COMMITTEE

The provisions of the bill considered by the Committee are briefly described below.

Corporate Average Fuel Economy (CAFE)

The Motor Vehicle Information and Cost Savings Act requires that each auto manufacturer selling new cars in the U.S. achieve certain average new car and light truck fleet fuel economy standards. Under the Act, each manufacturer must separately achieve the required CAFE levels on its "domestic" and "import" fleets of cars and light trucks. Under existing law, an automobile is considered domestically manufactured if:

> At least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year.

15 U.S.C. Section 2003(b)(2)(E).

Under NAFTA, Mexican value added to a vehicle's manufacture would be counted toward its domestic content for CAFE purposes. This change in law would be phased in over ten years. Thus, beginning with model year 2005, all U.S., Canadian or Mexican value added would be credited towards the vehicle's domestic content for CAFE calculation purposes, if such vehicles are sold in the United States. The phase-in period is designed to assist manufacturers who are currently dividing their vehicle production between the United States, Canada or Mexico to meet the CAFE law's requirements.

To implement these provisions of the NAFTA, section 371 of the bill adds Mexico to the United States and Canada in the Corporate Average Fuel Economy definition of "domestically manufactured" (15 U.S.C. 2003(b)(2)(G)). The existing CAFE definition of "automobiles," which includes both passenger automobiles and light trucks, is not affected by the proposed implementing bill or regulatory changes.

Manufacturers that began production of automobiles in Mexico before model year 1992 may make a one-time election at any time between January 1, 1997, and January 1, 2004, to apply the new definition beginning with the next model year after such election. For those not making such election, the new definition will apply beginning with the next model year after January 1, 2004.

For manufacturers that began or begin production of automobiles in Mexico after model year 1991, the new definition will apply beginning with the next model year after January 1, 1994, or the date that the manufacturer begins production of automobiles in Mexico, whichever is later.

Manufacturers that produce automobiles in Canada or the United States but not in Mexico (and that may procure inputs from Mexico) may make a one-time election at any time between January 1, 1997 and January 1, 2004, to apply the new definition beginning with the next model year after such election. For those not making such election, the new definition will apply beginning with the next model year after January 1, 2004.

For manufacturers that do not produce automobiles in any NAFTA country (but that may procure inputs from Mexico), the new definition will apply beginning with the next model year after January 1, 1994.

Standards-Related Measures

Title IV of the Trade Agreements Act of 1979 implemented the obligations of the GATT Agreement on Technical Barriers to Trade, commonly referred to as the Standards Code, in U.S. law. The Standards Code seeks to eliminate national product standardization and testing practices and certification procedures as barriers to trade among the signatory countries and to encourage the use of open procedures in the adoption of standards. At the same time, it does not limit the ability of countries to reasonably protect the health, safety, security, environment, or consumer interests of their citizens. Since U.S. practices were already in conformity with the Standards Code, Title IV did not amend, repeal, or replace any previous law. It simply required all federal agencies to abide by the provisions of the Standards Code.

Chapter Nine includes similar obligations regarding standards-related measures for the three NAFTA countries. Section 351 of the implementing bill amends Title IV of the Trade Agreements Act of 1979 to add a new subtitle concerning standards-related measures under the NAFTA. Chapter 2 of the new subtitle contains provisions to implement NAFTA Chapter Nine.

Federal agencies have been subject to the requirements of Title IV since 1980. These requirements continue to apply to standards activities of federal agencies, which include many of the standards-related measures under the NAFTA. However, the definitions and coverage of Chapter Nine differ from the definitions and coverage of the Standards Code, so it is necessary to provide separate legislative provisions in the Trade Agreements Act of 1979 to implement Chapter Nine of the NAFTA.

Section 471 of the new subtitle contains general provisions. Section 472 of the new subtitle assigns to the standards information center established under Section 414 of the Trade Agreements Act

of 1979 the additional duties prescribed under Chapter Nine. The National Institute of Standards and Technology (NIST) under the Department of Commerce currently serves as the standards information center.

Section 473 of the new subtitle provides definitions of the terms used in Chapter 2 of the new subtitle. These definitions are drawn directly from the definitions in the NAFTA. The definitions of "standard" and "technical regulation" are taken from the notes to Article 915 agreed to by the NAFTA countries.

Committee on Standards-Related Measures

Article 913 of the NAFTA establishes a trinational Committee on Standards-Related Measures, whose functions include facilitating the process by which the three NAFTA countries make compatible their standards-related measures and enhancing cooperation on the development, application and enforcement of standards-related measures. Subcommittees will be created to address specific issues, including land transportation, telecommunications, automotive standards and textile and apparel goods.

Section 352 of the bill provides that any regulations issued by the Secretary of Transportation implementing a recommendation of the Land Transportation Standards Subcommittee may not take effect before 90 days after issuance.

PART IV. REPORT OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

On November 18, 1993, the Committee on Governmental Affairs voted unanimously to report out, without recommendation, Section 381, Subtitle G of Title III of S. 1627—legislation to implement the North American Free Trade Agreement (NAFTA).

Section 381 makes the necessary changes to U.S. law to implement Chapter Ten of NAFTA on government procurement. This Chapter requires the U.S., Canada, and Mexico to eliminate many "buy national" restrictions on the purchases by their Federal governments of goods and services supplied by North American firms. The Chapter seeks to harmonize the respective procurement systems of the three nations; to expand the number of governmental and quasi-governmental entities covered; to establish a dollar threshold for application of the Agreement; to promote transparency, non-discriminatory treatment, and the redress of grievances in the procurement systems of the signatory nations; and to prohibit the use of "offsets" in the evaluation or award of contracts.

Chapter Ten allows the U.S. certain exceptions from coverage of its provisions. U.S. small business and minority preferences will continue to apply. Department of Defense purchases for national security reasons, Department of Agriculture farm support and human feeding programs, state and local government procurements, and foreign assistance purchases by the Agency for International Development—all are exempt from the requirements of the Chapter.

The Committee does have some concerns over Chapter Ten—particularly over whether the Chapter's provisions have enough flexibility to accommodate possible changes in the U.S. procurement system to streamline, simplify and make more efficient its operation. Also, advances in technology, particularly advances in information management and communications technology, could profoundly affect the procurement systems of each of the three countries. The Committee is concerned that the implementation of Chapter Ten might impede or restrict the integration of new technologies into the U.S. procurement system that would substantially improve its effectiveness and efficiency.

On October 25, Chairman John Glenn and Ranking Member William Roth wrote Ambassador Kantor raising these general concerns. More specifically, the letter pointed out the how Committee's legislative efforts to streamline Federal procurement procedures for purchases under $100,000 might conflict with the $50,000 threshold level proposed in NAFTA. Further, the letter posed the prospect of whether the 40 day waiting period put forth in Article 1012 of Chapter Ten would prevent the U.S. government from moving to an electronic data interchange system whereby decisions on the so-

licitation of bids and awarding of contracts would be made very quickly.

On November 11, Ambassador Kantor wrote back to Senators Glenn and Roth to address the issues raised in their letter. His response asserted USTR's belief that Chapter Ten's provisions, as well as those in the implementing legislation, excluding U.S. small business and minority preferences from coverage would also encompass a larger small purchases threshold needed to streamline Federal procurement.

The USTR letter, however, notes, "we recognize that some of the procedures in Chapter Ten will stand in the way of electronic tendering." In this regard, Ambassador Kantor pledges to work closely with the Administrator of the Office of Federal Procurement Policy and respective Canadian and Mexican officials to ensure that there is enough flexibility to permit technological advances in the U.S. government procurement system, consistent with the express terms of Article 1024 (5) ("The Parties shall undertake further negotiations, to commence no later than one year after the date of entry into force of this Agreement, on the subject of electronic transmission."). The Committee expects a good faith effort by USTR in this regard, as well as to be kept fully and currently informed on the progress of these deliberations.

PART V. REPORT OF THE COMMITTEE ON THE JUDICIARY

SUMMARY OF SUBTITLE C—INTELLECTUAL PROPERTY PROVISIONS

A. Treatment of Inventive Activity

Section 331 of the bill amends 35 U.S.C. 104 to make it consistent with the requirements of Article 1709(7)of the Agreement, which requires patents to be available without discrimination as to the territory where the invention was made. Under current section 104, evidence of inventive activity outside the United States cannot be introduced in U.S. judicial or administrative proceedings for purposes of establishing the date of invention. Section 331 amends section 104 to provide that evidence of inventive activity in Mexico or Canada may be introduced for such purpose.

Concerns were raised that U.S. firms may be unable to probe and challenge adequately such evidence because they cannot obtain other information from Mexico or Canada relevant to the date of invention. The bill guards against such a possibility by including a provision that enables a party in such a proceeding to demonstrate that relevant information exists in Mexico or Canada and has been requested, that the information has not been made available under the laws and procedures of such country, and that the information would be "discoverable" in the United States. If the party can make this showing, the decision maker must draw appropriate inferences or take any other permissible action in favor of the party that requested the information in the proceeding. In deciding what inferences are appropriate, the decision maker should take into account all relevant facts, including the importance of the information that has not been made available, whether the information is in control of the party seeking to establish a date of invention prior to the filing date, and any other pertinent factor.

Consistent with the national treatment provisions of Chapter 17 of the Agreement, the bill extends the new section 104 provisions for those serving in the U.S. armed services to those serving in the armed services of other NAFTA countries.

B. Rental Rights in Computer Programs and Sound Recordings

Articles 1705(2) and 1706(1) require NAFTA governments to provide rental rights to authors of computer programs and producers of sound recordings, respectively. Current U.S. law provides rental rights for such works. Section 332 of the bill eliminates a "sunset" provision now contained in the Record Rental Amendment of 1984 so that producers of sound recordings will have rental rights on a permanent basis.

C. Non-registrability of Misleading Geographic Indications

Under the current version of the Trademark Act of 1946, a mark is not registrable on the principal register if it is "primarily geographically descriptive" or "deceptively misdescriptive" unless the mark has become distinctive of the applicant's goods. Marks that are considered "primarily geographically descriptive" or "deceptively misdescriptive" are registrable on the supplemental register. Registration on the supplemental register may, in time, facilitate a showing of "distinctiveness" and, thus, qualify for registrability on the principal register.

Paragraphs two and three of Article 1712 require NAFTA governments to refuse to register marks that are deceptively misdescriptive in respect of geographic origin regardless of whether the mark has acquired distinctiveness. By contrast, the article does not prohibit the registration of primarily geographically descriptive marks.

In light of this difference in treatment, section 333 of the bill creates a distinction in subsection 2(e) of the Trademark Act between geographically "descriptive" and "misdescriptive" marks and amends subsections 2(f) and 23(a) of the Act to preclude registration of "primarily geographically deceptively misdescriptive" marks on the principal and supplemental registers, respectively. The law as it relates to "primarily geographically descriptive" marks would remain unchanged.

The bill contains a grandfather clause that covers U.S. marks containing geographical terms that are in use or registered prior to the date of enactment.

D. Motion Pictures in the Public Domain

Annex 1705.7 of the Agreement requires the United States, subject to Constitutional and budgetary considerations, to restore copyright protection to certain motion pictures. These are films that fell into the public domain in the United States between January 1, 1978, and March 1, 1989, because of the failure of the motion picture to display a copyright notice as required under Title 17 of the United States Code as it existed prior to U.S. accession to the Berne Convention.

The obligation applies to all motion pictures produced in Mexico and Canada during that period and is not limited to motion pictures produced by nationals or residents of those countries. However, the commitment extends only to motion pictures—not to all audiovisual works.

Section 334 of the bill reestablishes copyright protection for such films by adding new subsection 104A to Title 17 of the U.S. Code. The new section covers only motion pictures produced between January 1, 1978, and March 1, 1989, the period during which section 405 provided a limited exception to the required use of the copyright notice to maintain protection.

Because certain related works typically are first published—and protected under copyright—along with the motion picture to which they pertain, Annex 1705.7 arguably requires that protection for related works be restored along with the motion pictures covered by the Annex. Accordingly, proposed subsection 104A provides copyright protection for such works if they fell into the public do-

main along with the relevant motion pictures. These works include the original music or dramatic text embodied in the sound track as well as the literary work on which the picture was based.

The bill takes into account U.S. Constitutional and budgetary considerations by providing notice to persons who are currently using the works covered by proposed subsection 104A(a) and by giving them a reasonable period in which to use or dispose of their stock. To this end, section 104A(b) of the bill provides that copyright owners of qualifying works and films must file a statement with the Copyright Office within one year of the effective date of the NAFTA providing notice that their works will no longer be in the U.S. public domain. Shortly following that period, the Copyright Office will announce in the Federal Register that those works will be protected pursuant to subsection 104A(a).

In addition, section 104A(c) of the bill provides that persons who are copying, performing or selling copies of such works may continue such activities for a period of one year following publication of the Federal Register notice. This "exhaustion of stock" provision applies only to copies produced or acquired before the enactment of this legislation.

Chapter 16: Temporary Entry for Business Persons

As provided in Article 1603 and Annex 1603, each NAFTA country will grant temporary entry to four categories of business persons:

(1) Business visitors engaged in international business activities related to research and design, growth, manufacture and production, marketing, sales, distribution, after-sales service, and other general services, reflecting the activities in a complete business cycle;

(2) Traders who carry on substantial trade in goods or services between their home country and the country they wish to enter, as well as investors seeking to commit a substantial amount of capital in that country, provided that such persons are employed or operate in a supervisory or executive capacity or one that involves essential skills;

(3) Intra-company transferees employed by a company in a managerial or executive capacity or one that involves specialized knowledge and who are transferred within that company to another NAFTA country; and

(4) Certain categories of professionals, set out in Appendix 1603.D.1, who meet minimum educational requirements or possess alternative credentials and who seek to engage in business activities at a professional level.

Chapter 19: Dispute Settlement in Antidumping and Countervailing Duty Cases

Summary of NAFTA Provisions

Chapter 19 largely duplicates, on a trilateral basis, procedures currently in effect between the United States and Canada under the CFTA for binational panel review of final antidumping and countervailing duty determinations and for notification and review of trade law amendments. Except for certain innovations intro-

duced in the NAFTA that are described below, the Statement of Administrative Action accompanying the CFTA Implementing Act, H. Doc. 100–216, 100th Cong., 2d Sess. 258–89 (1988), fully describes the panel system that will be established under the NAFTA.

Binational panel review.—The centerpiece of Chapter 19 of the NAFTA, like Chapter 19 of the CFTA, is the procedure described in Article 1904 whereby independent binational panels, composed of judges and experts from the two NAFTA countries, involved, will review final antidumping and countervailing duty determinations made by the relevant administering authorities in one country with respect to products from one of the other two countries. Nothing in Article 1904 or any other provision of Chapter 19 restricts in any way the right of a domestic industry to seek redress from unfair trading practices through national antidumping and countervailing duty laws.

Article 1904 contains a few significant procedural changes from the comparable CFTA provision. Notably, the panels will continue to be binational in composition. One important improvement is the NAFTA's preference for appointing judges and former judges as panelists. Annex 1901.2 of the NAFTA provides that the roster for binational panels "shall include judges and former judges to the fullest extent practicable."

There are several advantages to having judges and former judges serve as panelists. For example, the participation of panelists with judicial experience would help to ensure that, in accordance with the requirement of Article 1904, panels review determinations of the administering authorities precisely as would a court of the importing country by applying exclusively that country's antidumping and countervailing duty law and its standard of review. In addition, the involvement of judges in the process would diminish the possibility that panels and courts will develop distinct bodies of U.S. law.

For these reasons, the United States hopes not only to include judges and former judges on the roster to the fullest extent practicable as required by Annex 1901.2, but also to appoint judges and former judges to individual panels and committees whenever they are willing and available to serve.

To implement the new Annex 1901.2 obligation most effectively, section 402 establishes two separate procedures: The first for inclusion on the roster and appointment to panels of sitting Article III judges and the second for inclusion on the roster and appointment to panels of retired judges, former judges, and administrative law judges, as well as panelists who do not have judicial experience.

Sections 402(a) and (c) set forth procedures for the selection of prospective panelists and committee members other than sitting Article III judges. This selection system will operate substantially as it has under the CFTA. USTR will be required to submit the preliminary and amended candidate lists submitted to the Committees on Finance and Ways and Means along with the statement of professional experience for each candidate. These statements will, in general, consist of a resume or comparable document that includes a list of the candidate's publications, and, in the case of a practicing attorney or consultant, a list of the clients represented

by the candidate or the candidate's firm if there could be a conflict or the appearance of a conflict of interest.

The purpose of this requirement is to provide basic background information on the prospective candidates to the appropriate Committees in order to improve the consultative process established in the statute and to avoid conflicts and appearances of conflicts of interest. The requirement is not intended to establish a confirmation procedure or to discourage the participation of potential panelists.

Sections 402(a) and (b) establish a new procedure for the inclusion of sitting Article III judges on Chapter 19 rosters, notification of the rosters to Congress and appointment of such judges to panels or committees in specific cases. This procedure takes into account the special status of sitting Article III judges as well as other considerations (including their existing caseloads) and makes participation by sitting judges entirely voluntary.

Section 402(b) requires the USTRs to adhere to the following procedures in including sitting Article III judges on rosters and appointing such judges to serve on specific panels or committees. First, the USTR will consult with the Chief Judges of the Federal circuits, or their designees, to discuss Article III judges' interest in and availability for sitting on binational panels, extraordinary challenge committees and special committees. If a Chief Judge determines that it is appropriate for one or more judges within that circuit to be included on a roster, the Chief Judge will submit a list of those judges to the Chief Justice of the United States, who may submit the list to the USTR. It will be the decision of the Chief Justice of the United States whether the names of any judges from a Federal court should be submitted to the USTR for inclusion on the roster.

The USTR will include those judges on a roster and provide a copy of the list of such judges to the Senate Committees on Finance and the Judiciary and the House Committees on Ways and Means and the Judiciary at the time USTR submits final candidate lists and final forms of amendment to the appropriate Committee. Thereafter, at the time the USTR proposes to include individual sitting Article III judges on a binational panel, extraordinary challenge committee, or special committee, USTR will consult with those judges to ascertain whether they are available to be appointed to the specific panel or committee.

Consistent with Annex 1901.2 and the procedures established under section 402 of the bill, USTR hopes to name as many sitting Article III and other judges as possible to the roster. Other judges that may be placed on the roster by virtue of their being included on a final candidate list in accordance with the procedures described at sections 402(a) and (c) include: retired Federal judges under 28 U.S.C. 371(a); administrative law judges; and former judges. To be eligible for placement on the roster, these judges, like other candidates, must have general familiarity with international trade law, which includes a relevant experience in administrative law or international commercial law matters. All judges are presumed to satisfy the other criteria set forth in Annex 1901.2 by virtue of their status as judges.

Section 402(a)(2) of the bill prescribes that the USTR will appoint judges to serve on a particular panel unless, based on the

procedures set out above, the USTR ascertains that judges are not available to serve. In requiring the USTR to appoint judges to serve as panelists where they are available, section 402(a)(2) takes into account the existing canons of the Code of Conduct for United States Judges. Under Canon 5G, Federal judges may undertake responsibilities outside the scope of their judicial duties if Congress authorizes appointment of judges, so long as service would not, in the view of the judge appointed, interfere with the performance of judicial responsibilities or otherwise impair public confidence in their integrity or impartiality.

PART VI. REPORT OF THE COMMITTEE ON FOREIGN RELATIONS

INTRODUCTION

On November 4, 1993, S. 1627—the North American Free Trade Agreement Implementation Act was introduced by Senator Mitchell, for himself and Senator Dole (by request). S. 1627 was jointly referred to six committees—Finance; Agriculture, Nutrition, and Forestry; Commerce, Science, and Transportation; Government Affairs; the Judiciary; and Foreign Relations.

S. 1627 was referred to the Committee on Foreign Relations because of provisions contained in Subtitle D—Implementation of NAFTA Supplemental Agreements. This subtitle provides the necessary authority for the United States to participate in the North American Agreement on Labor Cooperation, and the North American Agreement on Environmental Cooperation, the so called "Side Agreements" that were negotiated by the Clinton Administration to address concerns related to labor and the environment.

It also contains provisions which will enable the United States to participate in the Border Environmental Cooperation Commission and the North American Development Bank—two organizations established by the "November 1993 Agreement Between the United States of America and the Government of the United Mexican States Concerning the Establishment of A Border Environmental Cooperation Commission and a North American Development Bank."

COMMITTEE ACTION

On October 27, 1993, in anticipation of the referral of S. 1627, The Committee on Foreign Relations held a hearing on NAFTA, the Supplemental Agreements and the foreign policy implication of U.S. participation in NAFTA and related agreements. The following witnesses provided testimony before the committee: Deputy Secretary of State Clifton Wharton; Assistant Secretary of Treasury for International Affairs Jeffrey Shafer; Deputy Trade Representative Rufus Yerxa; William J. Cunningham, Legislative Representative, AFL–CIO; Stewart Hudson, Legislative Representative, International Programs Division, National Wildlife Federation; and Cameron Duncan, Coordinator of Trade and Environmental Policy, Greenpeace.

On November 4, 1993, S. 1627 was referred to the Committee on Foreign Relations. On November 18, 1993 the Committee reported S. 1627 favorably by a vote of 15 to 2; with Senators Pell, Biden, Dodd, Kerry, Simon, Robb, Mathews, Lugar, Kassebaum, Pressler, Murkowski, Brown, Jeffords, Coverdell, and Gregg voting aye; and Senators Feingold and Helms voting no.

COMMITTEE COMMENTS

The Committee on Foreign Relations focused on two principle areas during consideration of S. 1627; first, on the specific provisions contained in Subtitle D of the bill (which fall within the jurisdiction of the committee); and second, more broadly on the foreign policy implications of United States' participation in the NAFTA. The Committee believes that the Supplemental Agreements are an important and integral component of the NAFTA agreement. Finally, the Committee believes that the foreign policy interests for supporting NAFTA are compelling.

NAFTA: SUPPLEMENTAL AGREEMENTS ON LABOR AND THE ENVIRONMENT

The NAFTA Supplemental Agreements on Labor and the Environment were signed by the President on September 14, 1993. These agreements encourage Mexico, the United States, and Canada ("the Parties") to address labor and environmental issues in a cooperative and transparent process, and provide for strong dispute settlement procedures to promote improved enforcement of national standards. Thus, not only will NAFTA boost U.S. exports and its position in Latin America, but it will also ensure that American labor and environmental laws are not degraded, and that Mexican enforcement of its labor and environmental standards will improve significantly.

NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

The North American Agreement on Labor Cooperation (NAALC) is designed to promote cooperation between the Parties and to ensure effective enforcement of labor laws. It creates a new Commission on Labor Cooperation, headed by a Council consisting of the labor ministers of each country. The Council is intended to be a forum for cooperation on issues such as occupational safety, child labor, minimum wages, and resolution of labor disputes. The Council will be supported by an independent Secretariat, headed by an Executive Director appointed by consensus of the Parties for a fixed term.

The Secretariat is charged with investigating and reporting on a range of labor issues, including labor law enforcement and labor market conditions. These reports will be publicly available. In addition, based on the findings of Council consultations, any member of the Council can request the convening of an independent committee of experts to investigate evidence of non-enforcement of labor laws. If a Party believes that another country is exhibiting a persistent pattern of non-enforcement in the areas of worker safety, child labor, and minimum wage law, it may invoke dispute resolution procedures, which may result in the imposition of fines or trade sanctions.

NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION

The environmental supplemental agreement—the North American Agreement on Environmental Cooperation (NAAEC)—is designed to provide incentives for enforcement of national environmental regulations. It creates a new Commission on Environmental

Cooperation, whose Council will consist of the top environmental officials of the three countries. A Joint Advisory Committee, consisting of nongovernmental organizations, will advise the Council. The heart of the Commission will be its Secretariat, whose Executive Director, while under the direction of the Council, will enjoy considerable independence.

The objectives of the Commission are to promote cooperation among the members; improve public access to information on hazardous materials; consider trans-boundary environmental problems; address public concerns about NAFTA's effects on the environment; and assist the dispute settlement panels. The Secretariat will produce fact-finding reports in response to public submissions. The Parties will discuss these reports within the forum of the Council. If a Party feels that such consultations have failed to address a pattern of non-enforcement, it may request the creation of a dispute settlement panel, possibly leading to the imposition of fines or trade sanctions.

BORDER ENVIRONMENT COMMISSION AND THE NORTH AMERICAN BANK

In addition to the labor and environmental commissions established pursuant to the so call Side Agreements, the Governments of Mexico and the United States have also agreed on arrangements to assist communities on both sides of the border in coordinating and carrying out environmental infrastructure projects. This new agreement furthers the goals of the North American Free Trade Agreement and the North American Agreement on Environmental Cooperation.

The agreement provides for the establishment of two institutions:

(1) a North American Development Bank (NADBank), capitalized in equal shares by the United States and Mexico, that will provide some $2 billion or more in new financing to supplement existing sources of funds and foster the expanded participation of private capital; and

(2) a Border Environment Cooperation Commission (BECC) to assist local communities and other sponsors in developing and implementing environmental infrastructure projects, and to certify projects for NADBank financing.

The agreement provides up to 10 per cent of the NADBank capital to be used for community adjustment and investment programs in support of the purposes of the NAFTA.

The new agreement represents a significant additional commitment by Mexico and the United States to implement effective solutions to the environmental problems in the border region. It embodies the basic principles for coordinating and financing environmental infrastructure projects set forth by the two governments during their meeting on environmental cooperation in August, 1993. The two new institutions will help marshall resources from all sources, both public and private, to solve the environmental problems of the border region. The agreement is contingent on the entry into force of the North American Free Trade Agreement.

BORDER ENVIRONMENT COOPERATION COMMISSION

The Border Environment Cooperation Commission (BECC) will work with the affected states and local communities and nongovernmental organizations in developing effective solutions to environmental problems in the border region.

The BECC will provide technical and financial planning assistance for environmental infrastructure projects so as to enhance the environment in the border region for the well-being of the people on both sides of the border. The BECC will not itself develop or manage projects. Rather, it will assist, with their concurrence, states and localities and private investors proposing environmental infrastructure projects in coordinating environmental infrastructure projects; preparing, developing, and implementing projects; assessing their technical and financial feasibility; evaluating their social and economic benefits; and arranging public and private financing for such projects.

The BECC will certify projects to the NADBank and may do so for other financial institutions that elect to use the BECC's certification. The BECC may certify any project that meets the technical, environmental, and financial criteria applied by it. To be eligible for certification, projects shall be required to observe the environmental laws for the place where the project is to be located or carried out.

For a project with significant transboundary effects, an environmental assessment shall be presented and the Board shall determine, in consultation with affected states and localities, that the project meets the necessary conditions to achieve a high level of environmental protection for the affected area.

The BECC has no sovereign power. It can only offer its services to state and local bodies and assist them in cooperative activities. The BECC and the International Boundary and Water Commission will cooperate with each other in planning, developing, and carrying out border sanitation and other environmental activities.

The BECC will have a binational board of directors and decision-making procedures structured to ensure that the views of affected states, local communities, and members of the public will be fully taken into account. Each country shall have five members on the board of directors. Individuals selected to serve on the board shall have expertise in environmental, engineering, economic or financial matters. The board will be composed of the following members from each country:

—the senior environmental official of the government (the Administrator of the Environmental Protection Agency for the United States and the Secretario de Desarollo Social for Mexico);
—the commissioner of the International Boundary and Water Commission;
—a representative from a border state;
—a representative from a locality in the border region;
—a member of the public who resides in the border region.

The BECC will be required to consult with an Advisory Council of 18 members—nine from each country—that will include representatives of state or local governments or community groups

from each of the border states, and members of the public, including nongovernmental organizations. It will also establish procedures for public participation, including written notice and an opportunity to comment on general guidelines and on applications for certification of projects. The Commission's annual report will be made available to the public.

The BECC will be able to mobilize financing for environmental infrastructure projects from various sources, including the North American Development Bank; direct government support, such as grants, loans, and guarantees from federal, state and local governments; or the private sector. It will seek to mobilize private capital to the maximum extent possible in order to leverage government financing. Arrangements for servicing the debt will encourage reliance on fees paid by those causing pollution and those benefitting from the improved environment.

NORTH AMERICAN DEVELOPMENT BANK

The North American Development Bank (NADBank) will be capitalized and governed by the two countries. Its purpose is to finance projects certified by the BECC. Based on its capitalization, it is envisaged that the NADBank will be able to make some $2 billion or more in loans and guarantees, with an upper limit of $3 billion.

The NADBank will use its own capital (contributed equally by the United States and Mexico), funds raised by it in the financial markets, and other available resources to finance public and private investment in environmental infrastructure projects; and encourage and supplement private investment in environmental infrastructure projects.

The NADBank will be governed by a six-member board, with an equal number of representatives from each country. The Bank will evaluate the financial feasibility of projects certified by the BECC and provide financing as appropriate.

Initial paid-in capital will be $450 million, with callable capital of $2.55 billion.

The United States and Mexico also have agreed that up to 10 per cent of the resources of the Bank will be made available, on an equal basis, for community adjustment and investment programs in both countries, which need not be in the border region. Each government will develop criteria and procedures for directing these resources through existing government programs.

The NADBank is intended to supplement existing sources of financing. It is designed to facilitate, not impair, the ability of governments and investors to seek financing from other institutions.

FOREIGN POLICY IMPLICATIONS OF NAFTA

The Committee gave careful consideration to the foreign policy implications of NAFTA and concluded that passage of NAFTA is crucial to U.S. foreign policy interests in Latin American and in the world as a whole.

The Committee believes that these interests were summarized best by Deputy Secretary of State Clifton Wharton during his appearance before the Committee on October 27, 1993. Deputy Secretary Wharton made the following points:

—NAFTA puts aside the historical mistrust between the United States and Mexico, and solidifies a new relationship based on mutual respect and shared opportunity.
—Passage of NAFTA will signal American support for the process of economic and political reform in neighboring Mexico. Defeat of NAFTA would deal a serious blow to those in Mexico who support continued liberalization.
—In addition, passage of NAFTA will send a positive signal to those democratic leaders throughout Latin America and the Caribbean who have liberalized their economic systems and opened their markets to U.S. exports.
—Although NAFTA is not an exclusionary bloc, improved economic cooperation in this hemisphere will enhance our negotiating position in the GATT Uruguay Round talks. This could provide the impetus for a breakthrough in the stalled negotiations.
—Passage of NAFTA will establish the United States as the leader of a global movement toward economic cooperation and openness. International respect for the President's foreign policy leadership will increase, making other countries more receptive to U.S. foreign policy initiatives.

The Committee fully associates itself with these findings and believes that the Senate as a whole should give them serious consideration during its deliberations of S. 1627.

SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of Subtitle D—Implementation of NAFTA Supplemental Agreements.

SUBTITLE D—IMPLEMENTATION OF NAFTA SUPPLEMENTAL AGREEMENTS

Part 1—Agreements Relating to Labor and Environment

Section 531: Agreement on Labor Cooperation

Section 531 of the bill authorizes U.S. participation in the Commission for Labor Cooperation. This section would allow the President to designate the Commission and its employees to receive appropriate privileges and immunities, as required by the North American Agreement on Labor Cooperation, pursuant to the International Organizations Immunities Act, 22 U.S.C. 288 *et seq.*

Section 531 also authorizes $2,000,000 to be appropriated to the President for fiscal years 1994 and 1995 for payment of the U.S. assessed contributions to the Commission. It also clarifies that funds appropriated pursuant to the authorization are in addition to funds that may otherwise be available for the same purpose, such as funds appropriated to the contributions to the International Organization account or the International Conferences Contingencies account in the annual Department of State appropriations acts.

Section 532: Agreement on Environmental Cooperation

Section 532 authorizes U.S. participation in the Commission for Environmental Cooperation. This section would allow the President to designate the Commission and its employees to receive appro-

priate privileges and immunities, as required by the North American Agreement on Environmental Cooperation.

Section 532 also authorizes $5,000,000 to be appropriated to the President for fiscal years 1994 and 1995 for payment of the United States assessed contributions to the Commission for Environmental Cooperation. It contains the same clarification regarding funds appropriated pursuant to the authorization as set out in section 531.

Section 533: Agreement on Border Environmental Cooperation Commission

Section 533 authorizes U.S. participation in a bilateral Border Environmental Cooperation Commission ("BECC") with Mexico. The BECC will marshall funds, some of which will be provided through the North American Development Bank ("NADBank") as provided in Section 544, for environmental projects in the U.S.-Mexican border area. The BECC will initially give preference to waste water, water treatment and solid waste projects. Such facilities will be important to improve environmental conditions in the border area and to ensure that increased trade generated by the NAFTA does not adversely affect environmental quality in that region. The BECC will certify that projects seeking funding by the NADbank or other sources of financing comply with necessary environmental and financial standards.

Section 533 allows the President to designate the members of the BECC and its employees to receive appropriate privileges and immunities. The BECC's office will be located in the border region, along with a proposed EPA border office.

Section 533 authorizes $5,000,000 to be appropriated to the President for each fiscal year beginning with fiscal year 1994 for payment of U.S. assessed contributions to the BECC. It contains the same clarification regarding appropriated funds as set out in sections 531 and 532.

Section 533 also provides that for the purpose of any civil action brought by or against the BECC, the BECC shall be deemed to be an inhabitant of the federal judicial district in which the BECC's principal office in the United States, or its agency appointed for the purpose of accepting service or notice of service, is located. Any action to which the BECC is a party will be deemed to arise under the laws of the United States, and the federal district courts shall have original jurisdiction over such actions. The section specifies that state court actions against the BECC may be removed to federal court. Section 541 contains an analogous provision for the NADBank.

Part 2—North American Development Bank and Related Provisions

Section 541: North American Development Bank

Section 541 authorizes the President to accept U.S. membership in the NADBank and authorizes the Secretary of the Treasury to subscribe to the U.S. shares of the capital stock of the NADBank.

Section 541(b) provides that any such subscription will be effective only to such extent or in such amounts as are provided in advance in appropriations acts. This section also authorizes the ap-

propriation of $1,500,000,000 (representing $225,000,000 in paid-in capital and $1,275,000,000 in callable capital) for the U.S. subscription to its shares of the NADBank. In addition, section 541(b) provides that, for fiscal year 1995, the Secretary of the Treasury will pay to the NADBank out of any sums in the Treasury not otherwise appropriated the sum of $56,250,000 for the paid-in share portion of the U.S. share of the capital stock of the NADBank, and will subscribe to the callable portion of the U.S. share of the capital stock of the NADbank in an amount not to exceed $318,750,000.

The NADBank will be governed by a six-member board, with three members appointed by Mexico and three by the United States. Section 541(c) provides that the U.S. board members will not be entitled to any salary or other compensation from the bank or the United States for services as a board member.

Section 541(d) provides that the provisions of the Bretton Woods Agreements Act relating to the National Advisory Council on International Monetary and Financial Problems will apply with respect to the NADBank to the same extent as with respect to the World Bank and the International Monetary Fund.

Section 541(e) provides that, unless authorized by law, the United States may not subscribe to additional shares of stock to the NADBank, vote for or agree to any amendment of the agreement establishing the NADBank that would increase the obligations of the United States or change the purpose or functions of the NADBank, or make a loan or provide other financing to the NADBank.

Section 541(f) provides that any Federal Reserve bank that is requested to do so by the NADBank must act as its depository or as its fiscal agent, and that the Board of Governors of the Federal Reserve System will supervise and direct the carrying out of these functions by the Federal Reserve banks.

Section 541(h) extends to the NADBank certain exemptions from U.S. securities laws that have been given in the past to the various multilateral development banks, and establishes related reporting requirements.

Section 542: Status, Immunities, and Privileges

Section 542 provides that the status, privileges and immunities provisions of the agreement establishing the NADBank will have full force and effect in the United States.

Section 543: Community Adjustment and Investment Program

Section 543(a) of the bill provides that the President may enter into an agreement with the NADBank that facilitates implementation by the President of a community adjustment and investment program in support of the NAFTA pursuant to the agreement establishing the NADBank. The agreement provides that the total amount of loans, guarantees and grants provided for community adjustment and investment must not exceed ten percent of the sum of the paid-in capital actually paid to the bank by the United States and the amount of callable shares for which the United States has an unqualified subscription.

In furtherance of this program, the President is authorized to receive from the NADBank ten percent of the paid-in capital actually

paid to the bank by the United States and to transfer those funds to federal agencies that make or guarantee loans to pay the subsidy and, as appropriate, other costs associated with such loans or guarantees.

As specified in section 543(a)(4), such loans or guarantees will be subject to the restrictions and limitations that apply to the particular agency's existing loan or guarantee program, except that any funds transferred to an agency will be in addition to the amount of funds authorized in any appropriation act to be expended by that agency for its program.

Section 543(a)(5) provides that the President will establish guidelines for the loans and loan guarantees to be made by federal agencies under the community adjustment and investment program and endorse the grants and any loans or guarantees made by the NADBank for the community and investment program pursuant to the terms of the Border Environmental Cooperation Agreement.

Section 543(b) provides for the establishment of a public advisory committee in accordance with the Federal Advisory Committee Act. The committee will be composed of representatives of community groups whose constituencies include low-income families; nongovernmental organizations; business interests; and other appropriate entities, to be appointed by the President.

As set forth in section 543(b)(3), the advisory committee will provide advice to the President regarding the establishment of the community adjustment and investment program, including advice on the guidelines for loans and guarantees to be made under the program, advice on identifying the needs for adjustment assistance and investment in support of the goals and objectives of the NAFTA, taking into account economic and geographic considerations, and advice on such other matters as may be requested by the President. The advisory committee will also review, on a regular basis, the operation of the community adjustment and investment program and provide the President its conclusions.

Section 543(b)(4) provides, among other things, for the reimbursement of advisory committee members for travel, per diem and other necessary expenses incurred in the performance of their duties, and for the provision of a Secretariat and other services for the committee by appropriate federal agencies.

Under section 543(c), the President will appoint an ombudsman to provide the public with an opportunity to participate in the implementation of the community adjustment and investment program. The ombudsman will establish procedures for receiving comments from the public on the operation of the program, and will provide the President with summaries of those comments. The ombudsman will also perform an independent inspection and audit of the operation of the program and provide the President with the conclusions of the investigation and audit.

II. BUDGETARY IMPACT OF THE BILL

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

Congressional Budget Office, U.S. Congress,
WASHINGTON, DC, NOVEMBER 18, 1993.

Hon. DANIEL PATRICK MOYNIHAN, *Chairman,*
Committee on Finance,
U.S. Senate,
Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1627, the North American Free Trade Agreement Implementation Act.

Section 12(c) of the concurrent resolution on the budget requires a determination of any legislative proposal's effect on the deficit for fiscal years 1999 through 2003. CBO estimates that this bill would not increase the deficit over this period.

Enactment of S. 1627 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director*

Enclosure

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

November 18, 1993

1. BILL NUMBER: S. 1627

2. BILL TITLE: North American Free Trade Agreement Implementation Act

3. BILL STATUS:

As ordered reported by the Senate Committee on Finance on November 18, 1993.

4. BILL PURPOSE:

S. 1627 would approve the North American Free Trade Agreement (NAFTA) entered into on December 17, 1992, with the governments of Canada and Mexico. It would provide for tariff reductions and other changes in law related to implementation of the

agreement. The bill also would create a transitional adjustment assistance program for affected workers, require the use of an electronic fund transfer system for collecting certain taxes, and increase certain customs user fees. It also would authorize appropriations for a number of agricultural and other programs.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

The following tables summarize CBO's estimate of the budgetary impact of S. 1627. Table 1 shows the impact of the bill on direct spending and revenues. Table 2 details the estimated costs that depend on future appropriation actions.

TABLE 1. CBO ESTIMATES OF CHANGES IN REVENUES AND DIRECT SPENDING ASSOCIATED WITH S. 1627

[By fiscal year, in millions of dollars] [1]

	1994	1995	1996	1997	1998	Five-year total
Changes in Revenues (Net)						
Reduction in Tariff Rates	−214	−489	−547	−609	−672	−2,531
Electronic Federal Tax Deposit System: [2]						
On-Budget	49	262	272	371	1,207	2,161
Off-Budget	23	116	135	146	701	1,121
Customs Enforcement Initiative	17	22	22	23	23	107
Customs Modernization Provisions	−3	−3	−3	−3	−3	−15
Changes in Outlays						
Increases in Customs Fees (offsetting receipts)	−93	−203	−221	−241	0	−758
Increased Spending for Current Trade Adjustment Assistance Program [3]	10	25	25	20	25	105
New Trade Adjustment Assistance Benefits	([4])	7	8	9	9	33
Effects on Agricultural Price Support Programs	−64	−86	−66	−1	33	−184
North American Development Bank	0	54	2	0	0	56
Customs Modernization Provisions	−5	−5	−5	−5	−5	−25
Effect on Deficit						
Net Increase or Decrease (−) in Deficit:						
On-Budget	−1	0	−1	0	−493	−495
Off-Budget	−23	−116	−135	−146	−701	−1,121

[1] This table does not include any discretionary spending that would be associated with NAFTA.
[2] Estimate provided by the Joint Committee on Taxation.
[3] Trade adjustment assistance (TAA) for training costs is currently limited by law to a maximum of $80 million a year. This estimate assumes that this cap is maintained. If it were raise or eliminated, CBO estimates that TAA costs resulting from NAFTA would be a total of $25 million higher over the 1994-1998 period than shown above.
[4] Less than $500,000.

TABLE 2. CBO ESTIMATES OF AUTHORIZATIONS OF APPROPRIATIONS ASSOCIATED WITH S. 1627

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998	Five-year total
Agriculture Programs:						
Estimated Authorizations	96	22	22	22	22	184
Estimated Outlays	18	61	34	37	22	172
North American Development Bank:						
Estimated Authorizations	0	0	56	56	56	168
Estimated Outlays	0	0	56	56	56	168
Other Authorizations:						
Estimated Authorizations	21	16	11	11	11	70
Estimated Outlays	16	18	10	11	11	66

TABLE 2. CBO ESTIMATES OF AUTHORIZATIONS OF APPROPRIATIONS ASSOCIATED WITH S. 1627—Continued

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998	Five-year total
TOTAL AUTHORIZATIONS:						
Estimated Authorizations	117	38	89	89	89	422
Estimated Outlays	34	79	100	104	89	406

Basis of Estimate:

CHANGES IN REVENUES

Tariff Rate Reductions. Under NAFTA, all tariffs on U.S. imports from Mexico would be eliminated by 2008. Tariffs would be phased out for individual products at varying rates according to one of six different timetables ranging from immediate elimination to elimination over 15 years for some goods. Based on the composition of imports from Mexico in 1991, tariffs would be eliminated on about 60 percent of dutiable goods on January 1, 1994, and tariff revenue would be reduced by about 65 percent in calendar year 1994. By 1998, duties on about 70 percent of goods that are currently subject to duty would be eliminated, and tariff revenue would be about 85 percent lower than under current law.

Goods currently afforded duty-free treatment under the Generalized System of Preferences (GSP) would receive permanent duty-free treatment under NAFTA. Under current law, the GSP program is scheduled to expire after September 30, 1994. Therefore, this estimate includes the revenue loss from extending duty-free treatment to GSP goods imported from Mexico past the GSP's expiration date under current law.

CBO estimates that the provisions of NAFTA that reduce tariff rates would reduce revenues by $2.5 billion over 1994 through 1998, net of income and payroll tax offsets. This estimate is based on Census Bureau data for 1991 and 1992 on imports from Mexico. This estimate includes the effects of increased imports from Mexico that would result from the reduced prices of imported products in the U.S.—reflecting the lower tariff rates—and has been estimated based on the expected substitution between U.S. products and imports from Mexico. In addition, it is likely that some of the increase in U.S. imports from Mexico would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Mexico would displace imports from other countries.

Electronic Federal Tax Deposit System. The new federal tax deposit system would electronically transfer tax deposits to the Treasury, eliminating the need for banks to process paper coupons and checks. The change, which would be phased in gradually over several years, would allow deposits to be credited to the Treasury on the day of deposit instead of the day after deposit. Adoption of this system would not change the amount of taxes paid by taxpayers, but would shift the receipt by the Treasury of certain tax revenues

from the beginning of one fiscal year to the end of the preceding year. The Joint Committee on Taxation has estimated that these changes would increase on-budget receipts by $2.2 billion and off-budget receipts by $1.1 billion over the fiscal years 1994 through 1998.

Customs Enforcement Initiative. The bill would allow Customs Service auditors to access IRS income tax return information. This would allow auditors to use businesses' tax information on the valuation of imports and is expected to result in higher customs duty audit assessments. CBO estimates, net of income and payroll tax offsets, that the access to the information would result in increased receipts of $107 million over fiscal years 1994 through 1998.

Customs Modernization. Title VI of S. 1627 would expand the base of goods eligible for customs duty drawbacks and would allow increased exemptions from duty on certain personal articles, decreasing customs duties by $7 million each year. Title VI also would require payment of interest on merchandise revaluations after entering an item through U.S. Customs, increasing receipts by $4 million each year. CBO estimates, net of income and payroll tax offsets, these provisions would decrease receipts by $3 million each year.

CHANGES IN DIRECT SPENDING

Customs User Fees. S. 1627 would make several changes to user fees charged by the U.S. Customs Service, which are recorded in the budget as offsetting receipts. For the fiscal years 1994 through 1997 only, the current $5 passenger fee would be increased to $6.50 and the exemption granted to passengers arriving in the United States from Canada, Mexico, and the Caribbean would be removed. For fiscal years 1999 through 2003, customs user fees would be extended at the current $5 rate. (Under current law, these fees sunset at the end of fiscal year 1998.) CBO estimates that the $1.50 passenger fee increase and the removal of the exemption would result in additional fee collections of $758 million over the fiscal years 1994 through 1997.

Current Trade Adjustment Assistance (TAA) Program. Under current law, the TAA program provides cash assistance and training to workers who can demonstrate that increased imports contributed importantly to the loss of their job. If NAFTA were to be approved, CBO estimates that approximately 4,500 additional workers annually for fiscal years 1995 through 1998 would become eligible for TAA. The additional workers would not qualify for TAA immediately because workers must exhaust their unemployment benefits prior to collecting TAA. The fiscal year 1994 estimate assumes approximately 1,000 workers would qualify for TAA, assuming that NAFTA becomes effective January 1, 1994. Under current law, TAA recipients are required to participate in job training unless they receive a waiver. Currently, about 60 percent of the recipients train and 40 percent receive waivers. The average training cost is approximately $4,000 per person. Based on an average cash benefit of $4,800, CBO estimates the additional TAA cash assistance would be $5 million in 1994 and $20 million each year for fiscal years 1995 through 1998, and we estimate the additional TAA training

benefits would be $5 million in 1994 and $10 million each year for fiscal years 1995 through 1998, if all newly eligible workers were to receive their full training benefit.

Nevertheless, the TAA training program is a capped entitlement. The training benefits are capped at $80 million in fiscal years 1994, 1995, 1996, and 1998. In fiscal year 1997, the cap on funding for TAA training is $70 million. Because CBO's baseline is $5 million below the cap in fiscal years 1994, 1995, 1996, 1998 and equal to the cap in fiscal year 1997, the estimated increase in TAA training costs with the existing caps would be $5 million each year in fiscal years 1994, 1995, 1996, 1998 and zero in fiscal year 1997.

New Trade Adjustment Assistance Benefits. The bill would add a new sub-chapter to the TAA program to allow workers who lose their job because their firm shifts production to Mexico or Canada to qualify for TAA. In addition, workers would be required to enter a job training program by their sixteenth week of unemployment or their sixth week of TAA certification, whichever is later, to be eligible for benefits. Unlike the current TAA program, beneficiaries under this sub-part could not receive a waiver from training and still collect cash assistance. TAA cash and training benefits under this amendment would be available to those who are displaced from their jobs between January 1, 1994, and September 30, 1998. CBO estimates that fewer than 1,000 workers annually would qualify for TAA payments under this provision. The average training benefit would be $4,000 per person, and the average cash benefit would be approximately $6,000 per person. CBO estimates that total TAA payments under this new sub-part would be less than $500,000 in fiscal year 1994, $7 million in fiscal year 1995, $8 million in fiscal year 1996, and $9 million in each of the fiscal years 1997 and 1998.

Effects on Agricultural Price Support Programs. Gradual reductions in tariff and non-tariff barriers on agricultural products under the North American Free Trade Agreement are expected to result in increased trade between the United States and Mexico. An estimated net increase in U.S. exports of commodities currently supported by agriculture programs would result in higher market prices and a reduction in government support payments. While lower acreage reduction program (ARP) requirements (to compensate for increased demand) would mitigate some of the price increase, the ARP level could not be reduced in some years.

The bill also would require end use certificates for imports of wheat and barley. Such certificates would tend to discourage imports and raise the price for domestically produced grain, resulting in slightly lower program payments.

CBO estimates that increased exports and higher prices, combined with the requirement for end use certificates on imports of wheat and barley, would reduce federal expenditures on agricultural programs by $184 million during 1994 through 1998. The majority of these savings would be derived from higher prices and lower program payments for feed grains. The dairy sector and other grains would benefit noticeably from increased exports, leading to a reduction in federal support purchases and lower program costs.

North American Development Bank. Section 542 would authorize the President to accept membership in a North American Development Bank. The bank would be a multilateral bank with stock held by member states. The bill would authorize the United States to subscribe to 150,000 shares of capital stock and the appropriation of $1,500 million to purchase the stock. It would appropriate $56.25 million in 1995 for the first paid-in stock subscription, and would provide an authorization of appropriations for the remaining amount without fiscal year limitation.

The North American Development Bank would have the same structure as other regional development banks. Only 15 percent of the bank's stock would be paid-in, or purchased, by the member states. The balance would be callable capital. Callable capital would secure borrowing by the bank in private capital markets. The bank would relend the funds. Member states would make payments on callable capital subscriptions only to the extent that the bank could not service its debt from earnings on its investments.

The estimate assumes the U.S. government would subscribe to the capital stock in four equal annual installments. The first installment would be funded by the $56.25 million appropriated for paid-in capital and the authorization for callable capital subscriptions provided in section 541(a)(3) of this bill. The estimate assumes that the final three installments of paid-in capital would be provided in appropriations acts in 1996, 1997, and 1998. The estimate assumes that the appropriation for paid-in capital would represent outlays in the year provided. The authorization to subscribe to the callable capital stock is not expected to result in any appropriations or outlays during the period of the estimate.

Section 543 authorizes the President to enter into an agreement with the Bank to receive 10 percent of the paid-in capital actually paid to the Bank by the United States. The bill would authorize the President to use these funds, without further appropriation, to make loans or loan guarantees through existing federal programs to support the community adjustment and investment program defined in the Cooperation Agreement. CBO estimates this provision would result in a receipt to the government from the Bank of $5.6 million in 1995, and subsequent spending of the same amount through existing community development loan and loan guarantee programs.

Customs Modernization. S. 1627 would make several changes in the administrative procedures of the Customs Service. Customs would be allowed to release unclaimed merchandise for sale or destruction after six months rather than the one-year period mandated by current law. CBO estimates that this provision would decrease storage costs by $6 million annually. In addition, the number of entries that could be filed informally would be increased. Informal entries are assessed a lower customs user fee, and we estimate that this provision would decrease fee collections by $1 million annually. The net effect of these changes would be an outlay reduction of about $5 million a year.

SPENDING SUBJECT TO APPROPRIATIONS ACTION

Agriculture. Sections 321 and 361 of the bill would authorize a number of program changes that could increase federal outlays in

agricultural programs by an estimated $172 million over the 1994-1998 period. The majority of costs would reflect authorizations for assistance to farm workers in markets adversely affected by increased trade with Mexico ($20 million per year) and the construction of a containment facility for agricultural products from Mexico. Other provisions would require the Secretary of Agriculture to provide information and reports on various agriculture markets and to monitor end use certificates.

North American Development Bank. Beyond the amount appropriated for 1994, S. 1627 would authorize additional appropriations of $168 million for paid-in capital of the bank.

Section 543 would authorize the President to enter into an agreement with the Bank to receive 10 percent of the paid-in capital paid to the Bank by the United States. The bill would authorize the President to use the 10 percent portion to make loans or loan guarantees through existing federal programs to support the community adjustment and investment program defined in the Cooperation Agreement. CBO estimates this provision would result in a receipt to the government from the Bank of $5.6 million annually over the 1996-1998 period, and subsequent spending of the same amount through existing community development loan and loan guarantee programs.

NAFTA Secretariat. Title I would authorize the appropriation of up to $2 million to fund the United States section of the secretariat established by the agreement. These funds would be used to pay for the activities of the secretariat, as well as the commission, several committees and subcommittees, and various working groups subordinate to the secretariat. It also would allow the U.S. section to retain and spend reimbursements from the Mexican or Canadian section. We assume that the U.S. section of the secretariat would be established within the International Trade Administration of the Department of Commerce (DOC), and that the secretariat and the various committees under its jurisdiction would use the full $2 million authorized to pay for personnel and other costs.

Commerce Department Fees. Title III (subtitle E) would require the DOC to make available to the public certain information relating to sanitary procedures and would permit the DOC to charge reasonable fees for this information. Such fees would raise $1 million to $2 million annually and would be available for spending under existing authority.

Customs Automation Program. S. 1627 would establish the National Customs Automation Program, an automated and electronic system for processing information on commercial imports. We estimate that this program would cost $3 million in fiscal year 1994, assuming appropriation of the necessary funds.

Tax Collection Expenses. The bill would authorize the Harbor Maintenance Trust Fund to use, for the first time, up to $5 million annually to cover the administrative costs of collecting the harbor maintenance tax. We estimate that this would result in costs of $5 million annually, assuming appropriation of the necessary funds.

Commissions. Section 532 would authorize an annual appropriation of $5 million for 1994 and 1995 for the United States contributions to the annual budget of the Commission for Environmental Cooperation. This commission is described in article 43 of the

North American Agreement on Environmental Cooperation; its purpose is to address environmental issues affecting the continent. Section 533 would authorize annual appropriations of $5 million, starting in 1994, for the Border Environment Cooperation Commission (BECC) that is established by the Border Environment Cooperation Agreement. This commission would assist in developing solutions to environmental problems in the U.S.-Mexico border region. The BECC would certify environmental construction projects for the North American Development Bank (established by section 541) and other financial institutions.

International Trade Commission. Various provisions of the bill would require the International Trade Commission to monitor certain imports and to investigate and determine petitions for relief from imports benefiting from the agreement.. Based on information supplied by the commission, CBO estimates that these duties will require an additional authorization of less than $1 million per year.

6. PAY-AS-YOU-GO CONSIDERATIONS:

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of S. 1627 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill. The following table summarizes CBO's estimate of the pay-as-you-go impact of S. 1627. These figures represent the direct spending estimates in Table 1, excluding the effects on off-budget revenues.

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Change in outlays	−152	−208	−257	−218	62
Change in receipts	−151	−208	−256	−218	555

7. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS: None.

8. ESTIMATE COMPARISON: None.

9. PREVIOUS CBO ESTIMATE:

On November 4, 1993, CBO prepared an estimate, based on draft language, of the direct spending and revenue effects of the North American Free Trade Agreement Implementation Act. That estimate of revenues and direct spending is identical to the estimate for S. 1627.

On November 15, 1993, CBO prepared cost estimates for H.R. 3450, an identical bill ordered reported by the House Committee on Ways and Means, the House Committee on Banking, Finance and Urban Affairs, and the House Committee on Energy and Commerce. Those estimates are identical to this one.

10. ESTIMATE PREPARED BY:

Kim Cawley, Mark Grabowicz, Mary Maginniss, Eileen Manfredi, Ian McCormick, John Webb, and Robert Sunshine (226–2860), Cory Oltman (226–2820), Melissa Sampson (226–2720), Linda Radey (226–2693) and Joseph Whitehill (226–2940).

11. ESTIMATE APPROVED BY:

C. Nuckols, *Assistant Director for Budget Analysis.*

III. CHANGES IN EXISTING LAW

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1627, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988

* * * * * * *

TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

SEC. 301. AGRICULTURE.

(a) SPECIAL TARIFF PROVISIONS FOR FRESH FRUITS AND VEGETABLES.—

(1) The Secretary of Agriculture (hereafter in this section referred to as the "Secretary") may recommend to the President the imposition of a temporary duty on any Canadian fresh fruit or vegetable entered into the United States if the Secretary determines that both of the following conditions exist at the time that imposition of the duty is recommended:

(A) For each of 5 consecutive working days the import price of the Canadian fresh fruit or vegetable is below 90 percent of the corresponding 5-year average monthly import price for such fruit or vegetable.

(B) The planted acreage in the United States for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. For the purposes of applying this subparagraph, any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of October 4, 1987, shall be excluded.

Whenever the Secretary makes a determination that the conditions referred to in subparagraphs (A) and (B) regarding any Canadian fresh fruit or vegetable exist, the Secretary shall [promptly] *immediately* submit for publication in the Federal Register notice of the determination.

(2) No later than 6 days after publication in the Federal Register of the notice described in paragraph (1), the Secretary shall decide whether to recommend the imposition of a temporary duty to the President, and if the Secretary decides to

make such a recommendation, the recommendation shall be forwarded immediately to the President.

[(2)] *(3)* In determining whether to recommend the imposition of a temporary duty to the President under paragraph (1), the Secretary shall consider whether the conditions in subparagraphs (A) and (B) of such paragraph have led to a distortion in trade between the United States and Canada of the fresh fruit or vegetable and, if so, whether the imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.

[(3)] *(4)* Not later than 7 days after receipt of a recommendation of the Secretary under paragraph (1), the President, after taking into account the national economic interests of the United States, shall determine whether to impose a temporary duty on the Canadian fresh fruit or vegetable concerned. If the determination is affirmative, the President shall proclaim the imposition and the rate of the temporary duty, but such duty shall not apply to the entry of articles that were in transit to the United States on the first day on which the temporary duty is in effect.

[(4)] *(5)* A temporary duty imposed under paragraph [(3)] *(4)* shall cease to apply with respect to articles that are entered on or after the earlier of—

(A) the day following the last of 5 consecutive working days with respect to which the Secretary determines that the point of shipment price in Canada for the Canadian fruit or vegetable concerned exceeds 90 percent of the corresponding 5-year average monthly import price; or

(B) the 180th day after the date on which the temporary duty first took effect.

[(5)] *(6)* No temporary duty may be imposed under this subsection on a Canadian fresh fruit or vegetable during such time as import relief is provided with respect to such fresh fruit or vegetable under chapter 1 of title II of the Trade Act of 1974.

[(6)] *(7)* For purposes of this subsection:

(A) The term "Canadian fresh fruit or vegetable" means any article originating in Canada (as determined in accordance with section 202) and classified within any of the following headings of the Harmonized System:

(i) 07.01 (relating to potatoes, fresh or chilled);

(ii) 07.02 (relating to tomatoes, fresh or chilled);

(iii) 07.03 (relating to onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled);

(iv) 07.04 (relating to cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled);

(v) 07.05 (relating to lettuce (lactuca sativa) and chicory (cichorium spp.), fresh or chilled);

(vi) 07.06 (relating to carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled);

(vii) 07.07 (relating to cucumbers and gherkins, fresh or chilled);

(viii) 07.08 (relating to leguminous vegetables, shelled or unshelled, fresh or chilled);

(ix) 07.09 (relating to other vegetables (excluding truffles), fresh or chilled);

(x) 08.06.10 (relating to grapes, fresh);

(xi) 08.08.20 (relating to pears and quinces, fresh);

(xii) 08.09 (relating to apricots, cherries, peaches (including nectarines), plums and sloes, fresh); and

(xiii) 08.10 (relating to other fruit (excluding cranberries and blueberries), fresh).

(B) The term "corresponding 5-year average monthly import price" for a particular day means the average import price of a Canadian fresh fruit or vegetable, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(C) The term "import price" has the meaning given such term in article 711 of the Agreement.

(D) The rate of a temporary duty imposed under this subsection with respect to a Canadian fresh fruit or vegetable means a rate that, including the rate of any other duty in effect for such fruit or vegetable, does not exceed the lesser of—

(i) the duty that was in effect for the fresh fruit or vegetable before January 1, 1989, under column one of the Tariff Schedules of the United States for the applicable season in which the temporary duty is applied; or

(ii) the duty in effect for the fresh fruit or vegetable under column one of such Schedules, or column 1 (General) of the Harmonized System, at the time the temporary duty is applied. .

[(7)] *(8)*(A) The Secretary shall, to the extent practicable, administer the provisions of this subsection to the 8-digit level of classification under the Harmonized System.

(B) The Secretary may issue such regulations as may be necessary to implement the provisions of this subsection.

[(8) For purposes of assisting the Secretary in carrying out this subsection, the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables.]

(9) For purposes of assisting the Secretary in carrying out this subsection—

(A) the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables, and

(B) importers shall report such information relating to Canadian fresh fruits and vegetables to the Commissioner of Customs at such time and in such manner as the Commissioner requires.

[(9)] *(10)* The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.

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TITLE IV—BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

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SEC. 410. TERMINATION OF AGREEMENT.

(a) IN GENERAL.—If—

(1) no agreement is entered into between the United States and Canada on a substitute system of rules for antidumping and countervailing duties before the date that is 7 years after the date on which the Agreement enters into force, and

(2) the President decides not to exercise the rights of the United States under article 1906 of the Agreement to terminate the Agreement,

the President shall submit to the Congress a report on such decision which explains why continued adherence to the Agreement is in the national economic interest of the United States. *In calculating the 7-year period referred to in paragraph (1), any time during which Canada is a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) shall be disregarded.*

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TITLE V—EFFECTIVE DATES AND SEVERABILITY

SEC. 501. EFFECTIVE DATES.

(a) * * *

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[(c) TERMINATION OF PROVISIONS AND AMENDMENTS IF AGREEMENT TERMINATES.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection and section 410(b)), and the amendments made by this Act, shall cease to have effect.]

(c) TERMINATION OR SUSPENSION OF AGREEMENT.—

(1) TERMINATION OF AGREEMENT.—On the date the Agreement ceases to be in force, the provisions of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.

(2) EFFECT OF AGREEMENT SUSPENSION.—An agreement by the United States and Canada to suspend the operation of the Agreement shall not be deemed to cause the Agreement to cease to be in force within the meaning of paragraph (1).

(3) SUSPENSION RESULTING FROM NAFTA.—On the date the United States and Canada agree to suspend the operation of the

Agreement by reason of the entry into force between them of the North American Free Trade Agreement, the following provisions of this Act are suspended and shall remain suspended until such time as the suspension of the Agreement may be terminated:

(A) Sections 204(a) and (b) and 205(a).
(B) Sections 302 and 304(f).
(C) Sections 404, 409, and 410(b).

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TARIFF ACT OF 1930

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TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

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SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) * * *

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(c) MARKING OF CERTAIN PIPE AND FITTINGS.—(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, [or engraving] *engraving, or continuous paint stenciling.*

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the [four] *five* methods specified in paragraph (1), the article may be marked by an equally permanent method of marking [such as paint stenciling] or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

* * * * * * *

(e) MARKING OF CERTAIN MANHOLE RINGS OR FRAMES, COVERS, AND ASSEMBLIES THEREOF.—No exception may be made under subsection (a)(3) with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country or origin by means of die stamping, cast-in-mold lettering, etching, [or engraving] *engraving, or an equally permanent method of marking.*

* * * * * * *

(h) TREATMENT OF GOODS OF A NAFTA COUNTRY.—

(1) APPLICATION OF SECTION.—In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) under the regulations issued by the Sec-

retary to implement Annex 311 of the North American Free Trade Agreement—

(A) the exemption under subsection (a)(3)(H) shall be applied by substituting "reasonably know" for "necessarily know";

(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) if the good—

(i) is an original work of art, or

(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and

(C) subsection (b) does not apply to the usual container of any good described in subsection (a)(3)(E) or (I) or subparagraph (B)(i) or (ii) of this paragraph.

(2) PETITION RIGHTS OF NAFTA EXPORTERS AND PRODUCERS REGARDING MARKING DETERMINATIONS.—

(A) DEFINITIONS.—For purposes of this paragraph:

(i) The term "adverse marking decision" means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person—

(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

(B) INTERVENTION OR PETITION REGARDING ADVERSE MARKING DECISIONS.—If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth—

(i) a description of the merchandise; and

(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.

(C) EFFECT OF DETERMINATION REGARDING DECISION.—If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision—

(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise en-

tered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or

(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.

(D) JUDICIAL REVIEW.—For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 516 regarding an issue arising under any of the preceding provisions of this section.

[(h)] *(i)* PENALTIES.—Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall—

(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.

* * * * * * *

SEC. 306. CATTLE, SHEEP, SWINE, AND MEATS—IMPORTATION PROHIBITED IN CERTAIN CASES.

(a) [RINDERPEST AND FOOT-AND-MOUTH DISEASE.—If the Secretary of Agriculture] *IN GENERAL.—Except as provided in subsection (b), if the Secretary of Agriculture* determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals, from such foreign country, is prohibited *Provided*, That wild ruminants or swine may be imported from any such country upon such conditions, including post entry conditions, to be prescribed in import permits or in regulations, as the Secretary may impose for the purpose of preventing the dissemination of said diseases into or within the United States: *And provided further*, That the subsequent distribution, maintenance, and exhibition of such animals in the United States shall be limited to zoological parks approved by said Secretary as meeting such standards as he may by regulation prescribe for the purpose of preventing the dissemination of said diseases into or within the United States. The Secretary may at any time seize and dispose of any such animals which are not handled in accordance with the conditions imposed by him or which are distributed to or maintained or exhibited at any place in the United States which is not then an approved zoological park, in such manner as he deems necessary for said purpose.

[(b) Notwithstanding subsection (a), the Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary

of Agriculture determines appropriate, the importation of cattle, sheep, or other ruminants, or swine (including embryos of such animals) or the fresh, chilled, or frozen meat of such animals from a region of Canada notwithstanding the existence of rinderpest or foot-and-mouth disease in Canada, if—

[(1) the United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and

[(2) the appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease.]

(b) EXCEPTION.—The Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of cattle, sheep, other ruminants, or swine (including embryos of the animals), or the fresh, chilled, or frozen meat of the animals, from a region if the Secretary determines that the region from which the animal or meat originated is, and is likely to remain, free from rinderpest and foot-and-mouth disease.

* * * * * * *

SEC. 311. BONDED MANUFACTURING WAREHOUSES.

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

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

* * * * * * *

[No article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.]

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

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

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

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

SEC. 312. BONDED SMELTING AND REFINING WAREHOUSES.

(a) * * *

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

(1) upon the exportation [(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)] from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c)[, or]*; except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may*

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

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

(B) the total amount of customs duties paid to the NAFTA country on the product, or

* * * * * * *

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), and upon withdrawal from such other warehouse for exportation [(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)] or domestic consumption the provisions of this section shall apply[, or]*; except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—*

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

(B) the total amount of customs duties paid to the NAFTA country on the product, or

* * * * * * *

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no charges against such bond may be canceled in whole or part upon an exportation to Canada under paragraph (1) or (4) during the period such Agreement is in operation except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

* * * * * * *

(d) Upon the exportation [(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except

to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)]; of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; *except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 508(b)(2)(B)) in an amount not to exceed the lesser of—*

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

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

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free Trade Agreement Implementation Act of 1988.

* * * * * * *

SEC. 313. DRAWBACK AND REFUNDS.

(a) ARTICLES MADE FROM IMPORTED MERCHANDISE.—Upon the exportation *or destruction under customs supervision* of articles manufactured or produced in the United States with the use of imported merchandise, *provided that those articles have not been used prior to such exportation or destruction,* the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation *or destruction* of flour or by-products produced from [wheat imported after ninety days after the date of the enactment of this Act] *imported wheat.* Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) SUBSTITUTION FOR DRAWBACK PURPOSES.—If imported duty-paid merchandise and [duty-free or domestic merchandise] *any other merchandise (whether imported or domestic)* of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, *or destruction*

under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported *or destroyed* articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, *but only if those articles have not been used prior to such exportation or destruction*; but the total amount of drawback allowed upon the exportation *or destruction under customs supervision* of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

[(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.]

(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation, or destruction under the supervision of the Customs Service, of merchandise—

(1) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation;

(2) upon which the duties have been paid;

(3) which has been entered or withdrawn for consumption; and

(4) which, within 3 years after release from the custody of the Customs Service, has been returned to the custody of the Customs Service for exportation or destruction under the supervision of the Customs Service;

the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

* * * * * * *

[(j) SAME CONDITION DRAWBACK.—(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

[(A) is, before the close of the three-year period beginning on the date of importation—

[(i) exported in the same condition as when imported, or

[(ii) destroyed under Customs supervision; and

[(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 per centum of the amount of each such duty, tax, and fee so paid shall be refunded as drawback.

[(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic) that—

[(A) is fungible with such imported merchandise;

[(B) is, before the close of the three-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under Customs supervision;

[(C) before such exportation or destruction—

[(i) is not used within the United States, and

[(ii) is in the possession of the party claiming drawback under this paragraph; and

[(D) is in the same condition at the time of exportation or destruction as was the imported merchandise at the time of its importation;

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

[(3) Packaging material that is imported for use in packaging or repackaging imported merchandise to which paragraph (1) applies shall be eligible under the same conditions provided in such paragraph for refund, as drawback, of 99 per centum of any duty, tax, or fee imposed under Federal law on the importation of such material.

[(4) The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on—

[(A) the imported merchandise itself in cases to which paragraph (1) applies, or

[(B) the merchandise of the same kind and quality in cases to which paragraph (2) applies,

that does not amount to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).]

(j) UNUSED MERCHANDISE DRAWBACK.—

(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

(A) is, before the close of the 3-year period beginning on the date of importation—

(i) exported, or

(ii) destroyed under customs supervision; and

(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.

(2) [If] *Subject to paragraph (4), if*[1] *there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that—*

[1] The wording "Subject to paragraph (4), if" and paragraph (4) will take effect on the date the Agreement enters into force with respect to the United States

(A) is commercially interchangeable with such imported merchandise;

(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party—

(I) is the importer of the imported merchandise, or

(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise);

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies,

shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(4) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of section 203(a)

of that Act, shall not constitute an exportation for purposes of paragraph (2).[2]

* * * * * * *

(l) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, [the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section 309 (b) of this Act shall be filed and completed,] *the authority for the electronic submission of drawback entries* and the designation of the person to whom any refund or payment of drawback shall be made.

* * * * * * *

[(n) For purposes of subsections (a), (b), (f), (h), and (j)(2), the shipment on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, to Canada on an article, except an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of such Act, does not constitute an exportation.

[(o) For purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988. This subsection shall apply to vessels delivered to Canadian account or owner, or to the Government of Canada, on and after January 1, 1994 (or, if later, the date proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988).

[(p) SUBSTITUTION OF CRUDE PETROLEUM OR PETROLEUM DERIVATIVES.—

[(1) Notwithstanding any other provision of this section, in the case of articles, described in headings 2707 through 2715, 2901 and 2902, or 3901 through 3914 (limited to liquids, pastes, powders, granules, and flakes) of the Harmonized Tariff Schedule of the United States, that—

[(A) are—

[(i) manufactured or produced under subsection (a) or (b) from crude petroleum or petroleum derivatives, or

[(ii) imported duty-paid, and

[(B) are stored in common storage with other articles of the same kind and quality that are otherwise manufactured or produced,

drawback shall be paid on the articles withdrawn for export from such common storage (regardless of the source or origination of the articles withdrawn), if the requirements described in paragraph (2) are met.

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[2] Paragraph (4) will take effect on the date the Agreement enters into force with respect to the United States.

[(2) The requirements of this paragraph are met if—

[(A) inventory records kept on a calendar month basis (not on a daily or transaction-by-transaction basis) demonstrate sufficient quantities of imported duty-paid articles or articles manufactured or produced under subsection (a) or (b) in the common storage against which such withdrawal is designated;

[(B) such inventory records reflect deliveries to and withdrawals from such common storage that assure that the drawback paid does not exceed the amount of drawback that would be payable under this section had all of the articles withdrawn from common storage been imported duty-paid or manufactured or produced under subsection (a) or (b);

[(C) certificates of delivery or certificates of manufacture and delivery, establishing the drawback eligibility of the imported duty-paid articles or articles manufactured or produced under subsection (a) or (b), when required, are filed with the drawback entry; and

[(D) the inventory records of the operator of such common storage are, upon reasonable notice, available to the Customs Service.

[(3) For purposes of this subsection—

[(A) The term "common storage" includes all articles of the same kind and quality stored at a single facility regardless of the number of bins, tanks, or other containers used.

[(B) The term "same kind and quality" means articles that are commercially interchangeable or that are referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States.

[(C) The term "single facility" means all storage units under the control and recordkeeping of a single operator adjacent to a manufacturing plant, refinery, warehouse complex, terminal area, airport, bunkering facility, or similar facility.]

(n)(1) For purposes of this subsection and subsection (o)—

(A) the term "NAFTA Act" means the North American Free Trade Agreement Implementation Act;

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

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

(2) For purposes of subsections (a), (b), (f), (h), (p), and (q), if an article that is exported to a NAFTA country is a good subject to NAFTA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of—

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

(B) the total amount of customs duties paid on the good to the NAFTA country.

(3) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q), the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988 does not constitute an exportation.

(o)(1)For purposes of subsection (g), if—

(A) a vessel is built for the account and ownership of a resident of a NAFTA country or the government of a NAFTA country, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to NAFTA drawback,

the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the NAFTA country.

(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988.

(p) SUBSTITUTION OF FINISHED PETROLEUM DERIVATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, if—

(A) an article (hereafter referred to in this subsection as the "exported article") of the same kind and quality as a qualified article is exported;

(B) the requirements set forth in paragraph (2) are met; and

(C) a drawback claim is filed regarding the exported article;

the amount of the duties paid on, or attributable to, such qualified article shall be refunded as drawback to the drawback claimant.

(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are as follows:

(A) The exporter of the exported article—

(i) manufactured or produced the qualified article in a quantity equal to or greater than the quantity of the exported article,

(ii) purchased or exchanged, directly or indirectly, the qualified article from a manufacturer or producer described in subsection (a) or (b) in a quantity equal to or greater than the quantity of the exported article,

(iii) imported the qualified article in a quantity equal to or greater than the quantity of the exported article, or

(iv) purchased or exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

(B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.

(C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.

(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.

(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).

(F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.

(G) The manufacturer, producer, importer, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.

(3) DEFINITION OF QUALIFIED ARTICLE, ETC.—For purposes of this subsection—

(A) The term "qualified article" means an article—

(i) described in—

(I) headings 2707, 2708, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902 of the Harmonized Tariff Schedule of the United States, or

(II) headings 3901 through 3914 of such Schedule (as such headings apply to liquids, pastes, powders, granules, and flakes), and

(ii) which is—

(I) manufactured or produced as described in subsection (a) or (b) from crude petroleum or a petroleum derivative, or

(II) imported duty-paid.

(B) An exported article is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article.

(C) The term "drawback claimant" means the exporter of the exported article or the refiner, producer, or importer of such article. Any person eligible to file a drawback claim

under this subparagraph may designate another person to file such claim.

(4) LIMITATION ON DRAWBACK.—The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article—

(A) manufactured or produced under subsection (a) or (b) by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

(B) imported under clause (iii) or (iv) of paragraph (2)(A).

(q) PACKAGING MATERIAL.—Packaging material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j), shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax, or fee imposed under Federal law on the importation of such material.

(r) FILING DRAWBACK CLAIMS.—

(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the Customs Service was responsible for the untimely filing.

(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

(s) DESIGNATION OF MERCHANDISE BY SUCCESSOR.—

(1) For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

(2) For purposes of subsection (j)(2), a drawback successor may designate—

(A) imported merchandise which the predecessor, before the date of succession, imported; or

(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise for which the successor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the successor such merchandise;

as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.

(3) For purposes of this subsection, the term "drawback successor" means an entity to which another entity (in this subsection referred to as the "predecessor") has transferred by written agreement, merger, or corporate resolution—

(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor's records) certifies that—

(A) the transferred merchandise was not and will not be claimed by the predecessor, and

(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.

(t) DRAWBACK CERTIFICATES.—Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued.

(u) ELIGIBILITY OF ENTERED OR WITHDRAWN MERCHANDISE.—Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

(v) MULTIPLE DRAWBACK CLAIMS.—Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

SEC. 315. EFFECTIVE DATES OF RATES OF DUTY.

(a) Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this Act or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the [appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury,] *Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe,* except that

(1) * * *

* * * * * * *

(b) Any article which has been entered for consumption but which, before release from [customs custody] *custody of the Customs Service*, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article

as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.

(c) Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in [paragraph 813] *chapter 98 of the Harmonized Tariff Schedule of the United States* and section 562 of this Act (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

* * * * * * *

SEC. 321. ADMINISTRATIVE EXEMPTIONS.

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference [of less than $10] *of an amount specified by the Secretary by regulation, but not less than $20,* between the total estimated duties, *fees,* and taxes deposited, or the total duties *fees,* and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, *fees,* and taxes actually accruing thereon; [and]

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty [shall not exceed—] *shall not exceed an amount specified by the Secretary by regulation, but not less than—*

(A) [$50] *$100* in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States ([$100] *$200,* in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and America Samoa), or

(B) [$25] *$200* in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under subheading 9804.00.30 or 9804.00.70 of this Act, or

(C) [$5] *$200* in any other case[.]*; and*

(3) waive the collection of duties, fees, and taxes due on entered merchandise when such duties, fees, or taxes are less than $20 or such greater amount as may be specified by the Secretary by regulation.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2).

(b) The Secretary of the Treasury is authorized by regulations [to diminish any dollar amount specified in subsection (a) and] to prescribe exceptions to any exemption provided for in [such subsection] *subsection (a)* whenever he finds that such action is consistent with the purpose of [such subsection] *subsection (a)* or is

necessary for any reason to protect the revenue or to prevent unlawful importations.

* * * * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

[PART I—DEFINITIONS]

PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

Subpart A—Definitions

SEC. 401. MISCELLANEOUS.

When used in this title or in Part I of Title III—

(a) * * *

* * * * * * *

[(k) HOVERING VESSEL.—(1) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

[For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.

[(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

[(A) has visited any hovering vessel;

[(B) has received merchandise while in the customs waters beyond the territorial sea; or

[(C) has received merchandise while on the high seas; shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.]

(k) The term "hovering vessel" means—

(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws of the United States; and

(2) any vessel which has visited a vessel described in paragraph (1).

* * * * * * *

(n) The term "electronic transmission" means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

(o) The term "electronic entry" means the electronic transmission of the Customs Service of—

(1) entry information required for the entry of merchandise, and

(2) entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(p) The term "electronic data interchange system" means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

(q) The term "National Customs Automation Program" means the program established under section 411.

(r) The term "import activity summary statement" refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(s) The term "reconciliation" means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest.

* * * * * * *

Subpart B—National Customs Automation Program

SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the "Program") which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

(1) Existing components:

(A) The electronic entry of merchandise.

(B) The electronic entry summary of required information.

(C) The electronic transmission of invoice information.

(D) The electronic transmission of manifest information.

(E) Electronic payments of duties, fees, and taxes.

(F) The electronic status of liquidation and reliquidation.

(G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

(2) Planned components:

(A) The electronic filing and status of protests.

(B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.

(C) The electronic filing of import activity summary statements and reconciliation.

(D) The electronic filing of bonds.

(E) The electronic penalty process.

(F) The electronic filing of drawback claims, records, or entries.

(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) PARTICIPATION IN PROGRAM.—The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. Participation in the Program is voluntary.

SEC. 412. PROGRAM GOALS.

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

(1) is uniform and consistent;

(2) is as minimally intrusive upon the normal flow of business activity as practicable; and

(3) improves compliance.

SEC. 413. IMPLEMENTATION AND EVALUATION OF PROGRAM.

(a) OVERALL PROGRAM PLAN.—

(1) IN GENERAL.—Before the 180th day after the date of the enactment of this Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

(A) a general description of the ultimate configuration of the Program;

(B) a description of each of the existing components of the Program listed in section 411(a)(1); and

(C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.

(2) ADDITIONAL INFORMATION.—In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and

(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—

(i) importers, brokers, and other users of the Program, and

(ii) Customs Service occupations, operations, processes, and systems.

(b) IMPLEMENTATION PLAN, TESTING, AND EVALUATION.—

(1) IMPLEMENTATION PLAN.—For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall—

(A) develop an implementation plan;

(B) test the component in order to assess its viability;

(C) evaluate the component in order to assess its contribution toward achieving the program goals; and

(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(2) IMPLEMENTATION.—

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) EVALUATION AND REPORT.—The Secretary shall—

(A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year;

(C) with respect to the existing Program component listed in section 411(a)(1)(G) transmit to the Committees—

(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the implementation of the planned Program components listed in section 411(a)(2) (B) and (C), and

(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 411(a)(2).

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) COMMITTEES.—For purposes of this section, the term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 414. REMOTE LOCATION FILING.

(a) CORE ENTRY INFORMATION.—

(1) IN GENERAL.—A Program participant may file electronically an entry of merchandise with the Customs Service from a

location other than the district designated in the entry for examination (hereafter in this section referred to as a "remote location") if—

(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and

(B) the participant elects to file from the remote location.

(2) REQUIREMENTS.—

(A) IN GENERAL.—In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(i) The electronic entry of merchandise.

(ii) The electronic entry summary of required information.

(iii) The electronic transmission of invoice information (when required by the Customs Service).

(iv) The electronic payment of duties, fees, and taxes.

(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

(B) RESTRICTION ON EXEMPTION FROM REQUIREMENTS.—The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

(3) CONDITIONS ON FILING UNDER THIS SECTION.—The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant—

(i) fails to meet all the compliance requirements and operational standards of remote location filing; or

(ii) fails to adhere to all applicable laws and regulations.

(4) ALTERNATIVE FILING.—Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d).

(b) ADDITIONAL ENTRY INFORMATION.—

(1) IN GENERAL.—A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

(2) REQUIREMENTS.—The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.

(3) FILING OF ADDITIONAL INFORMATION.—

(A) IF INFORMATION ELECTRONICALLY ACCEPTABLE.—A Program participant that is eligible under paragraph (1) to

file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

(B) ALTERNATIVE FILING.—If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

(C) APPROPRIATE LOCATION.—For purposes of subparagraph (B), the "appropriate location" is—

(i) before January 1, 1999, a designated location; and

(ii) after December 31, 1998—

(I) if the paper documentation is required for release, a designated location; or

(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

(D) OTHER.—A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

(c) POST-ENTRY SUMMARY INFORMATION.—A Program participant that is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

(d) DEFINITIONS.—As used in this section:

(1) The term "designated location" means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.

(2) The term "Program participant" means, with respect to an entry of merchandise, any party entitled to make the entry under section 484(a)(2)(B).

PART II—REPORT, ENTRY, AND UNLOADING OF VESSELS AND VEHICLES

SEC. 431. MANIFEST—REQUIREMENT, FORM, AND CONTENTS.

[(a) The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

[First. The names of the ports or places at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port: *Provided,* That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo "for orders," and within fifteen days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by des-

ignating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

[Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel.

[Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag; and the names of the shippers of such merchandise.

[Fourth. The names of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.

[Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

[Sixth. An account of the sea stores and ship's stores on board of the vessel.

[(b) Whenever a manifest of articles or persons on board an aircraft is required for customs purposes to be signed, or produced or delivered to a customs officer, the manifest may be signed, produced, or delivered by the pilot or person in charge of the aircraft, or by any other authorized agent of the owner or operator of the aircraft, subject to such regulations as the Secretary of the Treasury may prescribe. If any irregularity of omission or commission occurs in any way in respect of any such manifest, the owner or operator of the aircraft shall be liable for any fine or penalty prescribed by law in respect of such irregularity.]

(a) IN GENERAL.—Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) shall have a manifest that complies with the requirements prescribed under subsection (d).

(b) PRODUCTION OF MANIFEST.—Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

* * * * * * *

(d) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall by regulation—

(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);

(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;

(C) prescribe the manner of production for, and the delivery or electronic transmittal of the manifest required by subsection (a); and

(D) prescribe the manner for supplementing manifests will bill of lading data under subsection (b).

(2) LETTERS AND DOCUMENTS SHIPMENTS.—For purposes of paragraph (1)(B)—

(A) the Customs Service may require with respect to letters and documents shipments—

(i) that they be segregated by country of origin, and

(ii) additional examination procedures that are not necessary for individually manifested shipments;

(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

(C) the term "letters and documents" means—

(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and

(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.

[SEC. 432. MANIFEST TO SPECIFY SEA AND SHIP'S STORES.

[The manifest of any vessel arriving from a foreign port or place shall separately specify the articles to be retained on board of such vessel as sea stores, ship's stores, or bunker coal, or bunker oil, and if any other or greater quantity of sea stores, ship's stores, bunker coal, or bunker oil is found on board of any such vessel than is specified in the manifest, of if any such articles, whether shown on the manifest or not, are landed without a permit therefor issued by the appropriate customs officer, all such articles omitted from the manifest or landed without a permit shall be subject to forfeiture, and the master shall be liable to a penalty equal to the value of the articles.]

SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

(a) VESSEL ARRIVAL.—(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

(A) any vessel from a foreign port or place;

(B) any foreign vessel from a domestic port; [or]

(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made; *or*

(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

* * * * * * *

(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall [present to customs officers such] *present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,* documents, papers, or manifests as the Secretary may by regulation prescribe.

[(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

[(1) depart from the port, place, or airport of arrival; or

[(2) discharge any passenger or merchandise (including baggage);

only in accordance with regulations prescribed by the Secretary.]

(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—

(1) depart from the port, place, or airport of arrival; or

(2) discharge any passenger or merchandise (including baggage).

[SEC. 434. ENTRY OF AMERICAN VESSELS.

[Except as otherwise provided by law, and under such regulations as the Secretary of Commerce may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the appropriate customs officer the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 431 of this Act.]

SEC. 434. ENTRY; VESSELS.

(a) FORMAL ENTRY.—Within 24 hours (or such other period of time as may be provided under subsection (c)(2)) after the arrival at any port or place in the United States of—

(1) any vessel from a foreign port or place;

(2) any foreign vessel from a domestic port;

(3) any vessel of the United States having on board bonded merchandise or foreign merchandise for which entry has not been made; or

(4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(b) PRELIMINARY ENTRY.—The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

(c) REGULATIONS.—The Secretary may by regulation—

(1) prescribe the manner and format in which entry under subsection (a) or subsection (b), or both, must be made, and such regulations may provide that such any entry may be made electronically pursuant to an electronic data interchange system;

(2) provide that—

(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

(B) formal entry may be made before arrival; and

(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

[SEC. 435. ENTRY OF FOREIGN VESSELS.

[The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the United States, except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the consul of the nation to which such vessel belongs that said documents have been deposited with him: *Provided,* That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession of the register and other papers of vessels entering the ports of such nations.]

SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, [AND ENTRY] *ENTRY, AND CLEARANCE* REQUIREMENTS.

(a) UNLAWFUL ACTS.—It is unlawful—

(1) to fail to comply with section [433] *431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)*;

[(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 433(d) without revealing the facts;]

(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 431(e), 433(d), or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) without revealing the facts; or

[(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or]

(3) to fail to make entry or to obtain clearance as required by section 434 or 644 of this Act, section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), or section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509); or

* * * * * * *

[SEC. 437. DOCUMENTS RETURNED AT CLEARANCE.

[The register, or document in lieu thereof, deposited in accordance with section 434 or 435 of this Act shall be returned to the master or owner of the vessel upon its clearance.]

SEC. 438. UNLAWFUL RETURN OF FOREIGN VESSEL'S PAPERS.

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section [435] *434* of this Act, *or regulations issued thereunder,* until such master shall produce to him a clearance in due form from [the appropriate customs officer of the port where such vessel has been entered.] *the Customs Service in the port in which such vessel has entered.* Any consul offending against the provisions of this section shall be liable to a fine of not more than $5,000.

[SEC. 439. DELIVERY OF MANIFEST.

[Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to such employee as the Secretary of the Treasury shall designate, a copy of the manifest, and shall on entering his vessel make affidavit that a true and correct copy was so mailed or delivered, and he shall also mail or deliver to such employee designated by the Secretary a true and correct copy of any correction of such manifest filed on entry of his vessel. Any master who fails so to mail or deliver such copy of the manifest or correction thereof shall be liable to a penalty of not more than $500.

[SEC. 440. CORRECTION OF MANIFEST.

[If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do shall be liable to a penalty of $500.]

SEC. 441. [VESSELS NOT REQUIRED TO ENTER.] *EXCEPTIONS TO VESSSEL ENTRY AND CLEARANCE REQUIREMENTS.*

[The following vessels shall not be required to make entry at the customhouse:] *The following vessels shall not be required to make entry under section 434 or to obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91):*

(1) * * *

* * * * * * *

[(3) Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels

not engaged in trade: *Provided,* That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: *Provided further,* That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival.]

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if—

(A) the vessel complies with the reporting requirements of section 433, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival;

[(4)] *(5)* Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided,* That the master, owner or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; and

[(5)] *(6)* Tugs [enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers] *documented under chapter 121 of title 46, United States Code, with a Great Lakes endorsement* when towing vessels which are required by law to enter and clear.

* * * * * * *

[SEC. 443. CARGO FOR DIFFERENT PORTS—MANIFEST AND PERMIT.

[Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the appropriate customs officer a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board.

[SEC. 444. ARRIVAL AT ANOTHER PORT.

[Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the appropriate customs officer at such port and shall produce the permit issued by the appropriate customs officer at the port of first arrival, together with the certified copy of his manifest.

[SEC. 445. PENALTIES FOR FAILURE TO HAVE PERMIT AND CERTIFIED MANIFEST.

[If the master of any such vessel shall proceed to another port or district without having obtained a permit therefor and a certified copy of his manifest, or if he shall fail to produce such permit and certified copy of his manifest to the appropriate customs officer at the port of destination, or if he shall proceed to any port not specified in the permit, he shall be liable to a penalty, for each offense, of not more than $500.]

* * * * * * *

SEC. 447. PLACE OF ENTRY AND UNLADING.

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided,* That upon good cause therefor being shown, the Secretary of Commerce may permit entry of any vessel to be made at a place other than port of entry designated by him, under such conditions as he shall prescribe: *And provided further,* That any vessel laden with merchandise in bulk may proceed after entry of such vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if [the appropriate customs officer shall consider] *the Customs Service considers* the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.

SEC. 448. UNLADING.

(a) PERMITS AND PRELIMINARY ENTRIES.—Except as provided in section 441 of this Act (relating to vessels not required to enter *or clear*), no merchandise, passengers, or baggage shall be unladen from any vessel [or vehicle arriving from a foreign port or place] *required to make entry under section 434, or vehicle required to report arrival under section 433,* until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unlading of the same issued *or transmitted pursuant to an electronic data interchange system* by [the appropriate customs officer] *the Customs Service*[: *Provided,* That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall excuse the master from making formal entry of his vessel at the customhouse, as provided by this Act]. After the entry[, preliminary or otherwise,] of any vessel or report of the arrival of any vehicle, [such customs officer] *the Customs Service* may issue a permit, *electronically pursuant to an authorized electronic data interchange system or otherwise,* to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except a provided

in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefore having been issued. [Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by [such customs officer,] *the Customs Service,* as provided in section 384, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made.] *The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 618. Such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490.*

* * * * * * *

SEC 449. UNLADING AT PORT OF ENTRY.

Except as provided in sections 442 and 447 of this act (relating to residue cargo and to bulk cargo, respectively), merchandise and baggage imported in such vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the [appropriate customs officer of such port issues a permit for the unlading of such merchandise or baggage,] *Customs Service issues a permit for the unlading of such merchandise or baggage at such port,* or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be trented as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination.

* * * * * * *

[SEC. 465. SAME—SUPPLIES.

[The master of any vessel of the United States documented to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers shall, upon arrival from a foreign contiguous territory, file with the manifest of such vessel a detailed list of all supplies or other merchandise purchased in such foreign country for use or sale on such vessel, and also a statement

of the cost of all repairs to and all equipment taken on board such vessel. The conductor or person in charge of any railway car arriving from a contiguous country shall file with the manifest of such car a detailed list of all supplies or other merchandise purchased in such foreign country for use in the United States. If any such supplies, merchandise, repairs, or equipment shall not be reported, the master, conductor, or other person having charge of such vessel or vehicle shall be liable to a fine of not less than $100 and not more than $500, or to imprisonment for not more than two years, or both.]

* * * * * * *

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

SEC. 481. INVOICE—CONTENTS.

(a) IN GENERAL.—[All invoices of merchandise to be imported into the United States shall set forth—] *All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this action shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:*

(1) * * *

* * * * * * *

[(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;]

(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

* * * * * * *

[(10) Any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require.]

(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisement, examination and classification of the merchandise.

* * * * * * *

[(c) PURCHASES IN DIFFERENT CONSULAR DISTRICTS.—When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 482 of this Act, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise.

The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.]

(c) IMPORTER PROVISION OF INFORMATION.—Any information required to be set forth on an invoice may alternatively be provided by any of the parties qualifying as an "importer of record" under section 484(a)(2)(B) by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.

(d) EXCEPTIONS BY REGULATIONS.—The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable *and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section.*

[SEC. 482. CERTIFIED INVOICE.

[(a) CERTIFICATION IN GENERAL.—Every invoice required pursuant to section 484(b) of this Act to be certified shall, at or before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officer of the United States—

[(1) For the consular district in which the merchandise was manufactured, or purchased, or from which it was to be delivered pursuant to contract;

[(2) For the consular district in which the merchandise is assembled and repacked for shipment to the United States, if it has been purchased in different consular districts.

[(b) DECLARATION.—Such invoices shall have indorsed thereon, when so produced, a verified declaration, in a form prescribed by the Secretary of the Treasury, stating whether the merchandise is sold or agreed to be sold, or whether it is shipped otherwise than in pursuance of a purchase or an agreement to purchase, that there is no other invoice differing from the invoice so produced, and that all the statements contained in such invoice and in such declaration are true and correct.

[(c) MAKING AND SIGNING.—Every certified invoice shall be made out in triplicate, or, for merchandise intended for immediate transportation under the provisions of section 552 of this Act, in quadruplicate, if desired by the shipper, and shall be signed by the seller or shipper, or the agent of either; but a person who has no interest in the merchandise except as broker or forwarder shall not be competent to sign any such invoice. Where any such invoice is signed by an agent, he shall state thereon the name of his principal.

[(d) CERTIFIED UNDER EXISTING LAW.—Such invoices shall be certified in accordance with the provisions of existing law.

[(e) DISPOSITION.—The original of the invoice and, if made, the quadruplicate shall be delivered to the exporter, to be forwarded to the consignee for use in making entry of the merchandise, and the triplicate shall be promptly transmitted by the consular officer to the appropriate customs officer at the port of entry named in the invoice. The duplicate shall be filed in the office of the consular officer by whom the invoice was certified, to be there kept until no longer needed in conducting the current business of the consular office, at which time it may be disposed of as provided by law.

[(f) CERTIFICATION BY OTHER THAN AMERICAN CONSUL.—When merchandise is to be shipped from a place so remote from an American consulate as to render impracticable certification of the invoice by an American consular officer, such invoice may be certified by a consular officer of a nation at the time in amity with the United States, or if there be no such consular officer available such invoice shall be executed before a notary public or other officer having authority to administer oaths and having an official seal: *Provided,* That invoices for merchandise shipped to the United States from the Philippine Islands, the Virgin Islands, American Samoa, the island of Guam, or the Canal Zone may be certified by the appropriate customs officer.

[(g) EFFECTIVE DATE.—This section shall take effect sixty days after the date of enactment of this Act.

[SEC. 484. ENTRY OF MERCHANDISE.

[(a) REQUIREMENT AND TIME.—(1) Except as provided in sections 490, 498, 552, 553, and 336(j) of this Act and in subsections (h) and (i) of this section, one of the parties qualifying as 'importer of record' under paragraph (2)(C) of this subsection, either in person or by an agent authorized by him in writing—

[(A) shall make entry therefor by filing with the appropriate customs officer such documentation as is necessary to enable such officer to determine whether the merchandise may be released from customs custody; and

[(B) shall file (at the time required under paragraph (2)(B) of this subsection) with the appropriate customs officer such other documentation as is necessary to enable such officer to assess properly the duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

[(2)(A) The documentation required under paragraph (1) of this subsection with respect to any imported merchandise shall be filed at such place within the customs-collection district where the merchandise will be released from customs custody as the Secretary shall by regulation prescribe.

[(B) The documentation required under paragraph (1)(B) of this subsection with respect to any imported merchandise shall be filed with the appropriate customs officer when entry of the merchandise is made or at such time within the ten-day period (exclusive of Saturdays, Sundays, and holidays) immediately following the date of entry as the Secretary shall by regulation prescribe.

[(C) When an entry of merchandise is made under this section, the required documentation shall be filed either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641 of this Act. When a consignee declares on entry that he is the owner or purchaser of merchandise, the appropriate customs officer may, without liability, accept the declaration. For the purposes of this title, the importer of record must be one of the parties who is eligible to file the documentation required by this section.

[(D) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy

and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data discovered after the release of merchandise shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

[(b) PRODUCTION OF CERTIFIED INVOICE.—The Secretary of the Treasury shall provide by regulation for the production of a certified invoice with respect to such merchandise as he deems advisable and for the terms and conditions under which such merchandise may be permitted entry under the provisions of this section without the production of a certified invoice.

The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this subdivision as he deems advisable.

[(c) PRODUCTION OR BILL OF LADING.—The importers of record shall produce the bill of lading at the time of making entry, except that—

[(1) If the appropriate customs officer is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to such customs officer may be accepted in lieu thereof;

[(2) The appropriate customs officer is authorized to permit entry and to release merchandise from customs custody without the production of the bill of lading if the person making such entry gives a bond satisfactory to such customs officer in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to relieve such customs officer of all liability, to indemnify the collector against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making such customs officer a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and

[(3) The provisions of this subdivision shall not apply in the case of an entry under subdivision (b) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).

[(d) SIGNING AND CONTENTS.—Such entry shall be signed by the importer of record, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisement, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates, and documents as are required by law and regulations promulgated thereunder.

[(e) STATISTICAL ENUMERATION.—The Secretary of the Treasury, the Secretary of Commerce, and the United States International

Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

[(f) PACKAGES INCLUDED.—If any of the certificates or documents necessary to make entry of any part of merchandise arriving on one vessel or vehicle and consigned to one consignee have not arrived, such part may be entered subsequently, and notation of the packages or cases to be omitted from the original entry shall be made thereon. One or more packages arriving on one vessel or vehicle addressed for delivery to one person and imported in another package containing packages addressed for delivery to other persons may be separately entered, under such rules and regulations as the Secretary of the Treasury may prescribe. All other merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, unless the Secretary of the Treasury shall authorize the inclusion of portions of such merchandise in separate entries under such rules and regulations as he may prescribe; except that, in the case of articles not subject to a quantitative or tariff-rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section 552 of this Act may be accepted at the port of entry designated by the consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury.

[(g) STATEMENT OF COST PRODUCTION.—Under such regulations as the Secretary of the Treasury may prescribe, the appropriate customs officer may require a verified statement from the manufacturer or producer sowing the cost of production of the imported merchandise, when necessary to the appraisement of such merchandise.

[(h) The carrier bringing the merchandise into the port at which entry is to be made may certify any person to be the owner, purchaser, or consignee of the merchandise, and that person may be accepted as such by the appropriate customs officer. A carrier shall not certify a person pursuant to this subsection unless it has actual knowledge of or reason to believe in the accuracy of such certification.

[(i) For the purposes of this section, the appropriate customs officer may accept a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry is to be made.

[(j) RELEASE OF MERCHANDISE.—Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is

made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. The appropriate customs officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made. The customs officer shall not be liable to any person in respect of the delivery of merchandise released from cutoms custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceeding against a customs officer on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by such customs officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such customs officer, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose.]

SEC. 484. ENTRY OF MERCHANDISE.

(a) REQUIREMENT AND TIME.—

(1) Except as provided in sections 490, 498, 552, 553, and 336(j), one of the parties qualifying as "importer of record" under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—

(A) make entry therefore by filing with the Customs Service—

(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and

(ii) notification whether an import activity summary statement will be filed; and

(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

(i) properly assess duties on the merchandise,

(ii) collect accurate statistics with respect to the merchandise, and

(iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, covering entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

(b) RECONCILIATION.—

(1) IN GENERAL.—A party that electronically transmits an entry summary or import activity summary statement may at the time of filing such summary or statement notify the Customs Service of his intention to file a reconciliation pursuant to such regulations as the Secretary may prescribe. Such reconciliation must be filed by the importer of record within such time period as is prescribed by regulation but no later than 15 months following the filing of the entry summary or import activity summary statement; except that the prescribed time period for reconciliation issues relating to the assessment of antidumping and countervailing duties shall require filing no later than 90 days after the Customs Service advises the importer that a period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

(2) REGULATIONS REGARDING AD/CV DUTIES.—The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.

(c) RELEASE OF MERCHANDISE.—The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

(d) SIGNING AND CONTENTS.—Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of

data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(e) PRODUCTION OF INVOICE.—The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) STATISTICAL ENUMERATION.—The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) STATEMENT OF COST OF PRODUCTION.—Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.

(h) ADMISSIBILITY OF DATA ELECTRONICALLY TRANSMITTED.—Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

SEC. 485. DECLARATION.

(a) REQUIREMENT—FORM AND CONTENTS.—Every importer of record making an entry under the provisions of section 484 of this Act shall make and file *or transmit electronically* therewith, in a form *and manner* to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) * * *

* * * * * * *

(d) **[**A**]** *An* importer of record shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe.

Such owner shall possess all the rights of [a] *an* importer of record.

* * * * * * *

(g) EXPORTED MERCHANDISE RETURNED AS UNDELIVERABLE.—With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.

* * * * * * *

SEC. 490. GENERAL ORDERS.

[(a) INCOMPLETE ENTRY.—Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the appropriate customs officer, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the appropriate customs officer believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.]

(a) INCOMPLETE ENTRY.—

(1) Whenever—

(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

(D) the Customs Service believes that any merchandise is not correctly and legally invoiced;

the carrier (unless subject to subsection (c)) shall notify the bonded warehouse of such unentered merchandise.

(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until—

(A) entry is made or completed and the proper documents are produced;

(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

(C) a bond is given for the production of documents or the transmittal of data.

(b) [AT REQUEST OF CONSIGNEE.—] *REQUEST FOR POSSESSION BY CUSTOMS.*—At the request of the consignee of any merchandise,

or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the [appropriate customs officer] *Customs Service* after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made.

(c) GOVERNMENT MERCHANDISE.—Any imported merchandise that—

(1) is described in any of paragraphs (1) through (4) of subsection (a); and

(2) is consigned to, or owned by, the United States Government;

shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.

SEC. 491. UNCLAIMED MERCHANDISE; DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES AND MALT LIQUOR

(a) Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in [customs custody for one year] *in a bonded warehouse pursuant to section 490 for 6 months* from the date of importation thereof, without all estimated duties [and storage], *taxes, fees, interest, storage,* or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the appropriate customs officer at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, *taxes, fees, interest,* storage, and other charges, if permitted to remain in [public store or bonded warehouse for a period of one year] *pursuant to section 490 in a bonded warehouse for 6 months,* may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 559 of this Act may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, *taxes, fees, interest,* storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, *taxes, fees, interest,* charges, and expenses nor may it be entered for warehouse. The computation of duties, *taxes, interest, and fees* for the purposes of this section and sections 493 and 559 of this Act shall be at the rate of rates applicable at the time the merchandise becomes subject to sale.

(b) NOTICE OF TITLE VESTING IN THE UNITED STATES.—At the end of the 6-month period referred to in subsection (a), the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day—

(1) the subject merchandise is entered or withdrawn for consumption; and

(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

(c) RETENTION, TRANSFER, DESTRUCTION, OR OTHER DISPOSITION.—If title to any merchandise vests in the United States by operation of subsection (b), such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on retained or transferred merchandise shall be paid by the receiving agency.

(d) PETITION.—Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b), can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b), or can establish to the satisfaction of the Secretary that the party did not receive notice under subsection (b), the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Treasury of the United States the amount the Secretary believes the party would have received under section 493 had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties.

[(b)] *(e)* All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by—

(1) * * *

* * * * * * *

(3) sale by [appropriate custom officer] *Customs Service* at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

* * * * * * *

SEC. 492. DESTRUCTION OF ABANDONED OR FORFEITED MERCHANDISE.

Except as provided in section 3369 of the Revised Statutes, as amended (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the [appropriate customs officer] *Customs Service* shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed, *retained for official use, or otherwise disposed of* under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction.

SEC. 493. PROCEEDS OF SALE.

The surplus of the proceeds of sales under section 491 of this Act, after the payment of storage charges, expenses, duties, *taxes, and fees,* and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited [by the appropriate customs officer] in the Treasury of the United States, if claim therefor shall not be filed with [such customs officer] *the Customs Service* within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale.

* * * * * * *

SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

(a) IN GENERAL.—(1) Any article which—

(A) is not included in the declaration and entry as made *or transmitted;* and

* * * * * * *

(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

[(A) if the article is a controlled substance, 1,000 percent of the value of the article; and]

(A) if the article is a controlled substance, either $500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

* * * * * * *

SEC. 498. ENTRY UNDER REGULATIONS.

(a) AUTHORIZED FOR CERTAIN MERCHANDISE.—The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

[(1) Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $1,250, as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions, except that this paragraph does not apply to articles valued in excess of $250 classified in—

[(A) chapters 50 through 63;

[(B) chapters 39 through 43, 61 through 65, 67 and 95; and

[(C) subchapters III and IV of chapter 99; of the Harmonized Tariff Schedule of the United States, or to any other article for which formal entry is required without regard to value;]

(1) Merchandise, when—

(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than $2,500; or

(B) different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;

(2) Products of the United States, when the aggregate value of the shipment does not exceed [$10,000] *such amounts as the Secretary may prescribe* and the products are imported—

(A) * * *

* * * * * * *

[SEC. 499. EXAMINATION OF MERCHANDISE.

[Imported merchandise, required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall not be delivered from customs custody, expect under such bond or other security as may be prescribed by the Secretary of the Treasury to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce; until it has been inspected, examined, or appraised and is reported by the appropriate customs officer to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States. Such officer shall designate the packages or quantities covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise and shall order such packages or quantities to be sent to the public stores or other places for such purpose. Not less than one package of every invoice and not less than one package of every ten packages of merchandise, shall be so designated unless the Secretary of the Treasury, from the character and description of the merchandise, is of the opinion that the examination of a less proportion of packages will amply protect the revenue and by special regulation or instruction, the application of which may be restricted to one or more individual ports or to one or more importations or one or more classes of merchandise, permit a less number of packages to be examined. All such special regulations or instructions shall be published in the weekly Treasury Decisions within fifteen days after issuance and before the liquidation of any entries affected thereby. Such officer may require such additional packages or quantities as he may deem necessary. If any package contains any article not specified in the invoice and, in the opinion of the appropriate customs officer, such article was omitted from the invoice with fraudulent intent on the part of the seller, shipper, owner, or agent, the contents of the entire package in which such article is found shall be subject to seizure, but if no such fraudulent intent is apparent, then the value of said article shall be added to the entry and the duties thereon paid accordingly. If a deficiency is found in quantity, weight, or measure in the examination of any package, report thereof shall be made to the appropriate customs officers, who shall make allowance therefore in the liquidation of duties.

[No appraisement made after the effective date of the Customs Administrative Act of 1938 shall be held invalid on the ground that the required number of packages or the required quantity of the merchandise was not designated for examination or, if designated, was not actually examined, unless the party claiming such invalidity shall establish that merchandise in the packages or quantities not designated for examination, or not actually examined, was different from that actually examined and that the difference was such as to establish the incorrectness of the appraisement; and

then only as to the merchandise for which the appraisement is shown to be incorrect.]

SEC. 499. EXAMINATION OF MERCHANDISE.

(a) ENTRY EXAMINATION.—

(1) IN GENERAL.—Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

(2) EXAMINATION.—The Customs Service—

(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;

(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;

(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and

(D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.

(3) UNSPECIFIED ARTICLES.—If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry—

(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or

(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.

(4) DEFICIENCY.—If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.

(5) INFORMATION REQUIRED FOR RELEASE.—If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the port of examination. The absence of such information does not limit the authority of the Customs Service to conduct an examination.

(b) TESTING LABORATORIES.—

(1) ACCREDITATION OF PRIVATE TESTING LABORATORIES.—The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be

used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations—

(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;

(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed $100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service—

(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation.

The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 13031(e)(6) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(6)).

(2) APPEAL OF ADVERSE ACCREDITATION DECISIONS.—A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28, United States Code, in the Court of International Trade within 60 days after issuance of the decision or order.

(3) TESTING BY ACCREDITED LABORATORIES.—When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry. Nothing in this subsection shall be construed to limit in any way or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.

(4) AVAILABILITY OF TESTING PROCEDURE, METHODOLOGIES, AND INFORMATION.—Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are—

(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

(ii) developed by the Customs Service for enforcement purposes.

(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information reveals information which is—

(i) proprietary to the holder of a copyright or patent; or

(ii) developed by the Customs Service for enforcement purposes.

(5) MISCELLANEOUS PROVISIONS.—For purposes of this subsection—

(A) any reference to a private laboratory includes a reference to a private gauger; and

(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.

(c) DETENTIONS.—Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

(1) IN GENERAL.—Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

(2) NOTICE OF DETENTION.—The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—

(A) the initiation of the detention;

(B) the specific reason for the detention;

(C) the anticipated length of the detention;

(D) the nature of the tests or inquiries to be conducted; and

(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(3) TESTING RESULTS.—Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the

holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(4) SEIZURE AND FORFEITURE.—If otherwise provided by law, detained merchandise may be seized and forfeited.

(5) EFFECT OF FAILURE TO MAKE DETERMINATION.—

(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 514(a)(4).

(B) For purposes of section 1581 of title 28, United States Code, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.

(C) Notwithstanding section 2639 of title 28, United States Code, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

SEC. 500. APPRAISEMENT, CLASSIFICATION, AND LIQUIDATION PROCEDURES.

[The appropriate customs officer] *The Customs Service* shall, under rules and regulations prescribed by the Secretary—

(a) [appraise] *fix the final appraisement of* merchandise by ascertaining or estimating the value thereof, under section 402, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;

(b) [ascertain the] *fix the final* classification and rate of duty applicable to such merchandise;

(c) fix the *final* amount of duty to be paid on such merchandise and determine any increased or additional duties, *taxes, and fees* due or any excess of duties, *taxes, and fees* deposited;

[(d) liquidate the entry of such merchandise; and

[(e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.]

(d) liquidate the entry and reconciliation, if any, of such merchandise; and

(e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.

SEC. 501. [VOLUNTARY RELIQUIDATIONS] *VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS SERVICE.*

A liquidation made in accordance with section 500 or any reliquidation thereof made in accordance with this section may be reliquidated in any respect by [the appropriate customs officer on his own initiative] *the Customs Service,* notwithstanding the filing of a protest, within ninety days from the date on which notice of the original liquidation is given *or transmitted* to the importer, his consignee or agent. Notice of such reliquidation shall be given *or transmitted* in the manner prescribed with respect to original liquidations under section 500(e).

SEC. 502. REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.

(a) POWERS OF SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law *(including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned)*, and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry[, and]. *The Secretary* may direct any customs officer to go from one port of entry to another for the purpose of appraising *or classifying* or assisting in appraising *or classifying* merchandise imported at [such port] *any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port.*

[(b) REVERSAL OF SECRETARY'S RULINGS.—No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of *the North American Free Trade Agreement or* the United States-Canada Free-Trade Agreement.]

[(c)] *(b)*[3] DUTIES OF CUSTOMS OFFICERS.—It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs.

* * * * * * *

SEC. 504. LIMITATION ON LIQUIDATION.

(a) LIQUIDATION.—[Except as provided in subsection (b),] *Unless an entry is extended under subsection (b) or suspended as required by statute or court order,* an entry of merchandise not liquidated within one year from:

(1) the date of entry of such merchandise;

(2) the date of the final withdrawal of all such merchandise covered by a warehouse entry; [or]

[3] The deletion of (b) and the change of (c) to (b) takes effect on the date the Agreement enters into force with respect to the United States.

(3) the date of withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under section 505(a) of this Act, duties may be deposited after the filing of an entry or withdrawal from warehouse; *or*

(4) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed;

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 500(e) of this Act, notice of liquidation need not be given of an entry deemed liquidated.

[(b) EXTENSION.—The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if—

[(1) information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officer;

[(2) liquidation is suspended as required by statute or court order; or

[(3) the importer of record requests such extension and shows good cause therefor.

[(c) NOTICE OF SUSPENSION.—If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer of record concerned and to any authorized agent and surety of such importer of record.

[(d) LIMITATION.—Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.]

(b) EXTENSION.—The Secretary may extend the period in which to liquidate an entry if—

(1) the information needed for the proper appraisement or classification of the merchandise, or for insuring compliance with applicable law, is not available to the Customs Service; or

(2) the importer of record requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record and the surety of such importer of record. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record at the expiration of 4 years from the applicable date specified in subsection (a).

(c) NOTICE OF SUSPENSION.—If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary consid-

ers appropriate, to the importer of record and to any authorized agent and surety of such importer of record.

(d) REMOVAL OF SUSPENSION.—When a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record.

[SEC. 505. PAYMENT OF DUTIES.

[(a) DEPOSIT OF ESTIMATED DUTIES.—Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the appropriate customs officer at the time of making entry, or at such later time as the Secretary may prescribe by regulation (but not to exceed thirty days after the date of entry), the amount of duties estimated by such customs officer to be payable thereon.

[(b) COLLECTION OR REFUND.—The appropriate customs officer shall collect any increased or additional duties due or refund any excess of duties deposited as determined on a liquidation or reliquidation.

[(c) Duties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation, and unless payment of the duties is received by the appropriate customs officer within 30 days after that date, shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation at a rate determined by the Secretary of the Treasury.]

SEC. 505. PAYMENT OF DUTIES AND FEES.

(a) DEPOSIT OF ESTIMATED DUTIES, FEES, AND INTEREST.—Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.

(b) COLLECTION OR REFUND OF DUTIES, FEES, AND INTEREST DUE UPON LIQUIDATION OR RELIQUIDATION.—The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

(c) INTEREST.—Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation.

(d) DELINQUENCY.—If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b), any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.

SEC. 506. ALLOWANCE FOR ABANDONMENT AND DAMAGE.

Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

(1) ABANDONMENT WITHIN THIRTY DAYS.—Where the importer abandons to the United States, within thirty days after entry in the case of merchandise [not sent to the appraiser's stores for] *released without an* examination, or within thirty days after the release [of the examination packages or quantities of merchandise] in the case of merchandise sent to [the appraiser's stores] *the Customs Service* for examination, any imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice *or entry* in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the collector directs unless [the appropriate customs officer] *the Customs Service* is satisfied that the merchandise is so far destroyed as to be nondeliverable;

(2) PERISHABLE MERCHANDISE, CONDEMNED.—Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files, *electronically or otherwise,* with [such customs officer] *the Customs Service* [written] notice thereof, an invoiced description and the location thereof, and the name of the vessel or vehicle in which imported.

* * * * * * *

SEC. 508. RECORDKEEPING.

[(a) REQUIREMENTS.—Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which—

[(1) pertain to any such importation, or to the information contained in the documents required by this Act in connection with the entry of merchandise; and

[(2) are normally kept in the ordinary course of business.

[(b) Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to such exportations.

[(c) PERIOD OF TIME.—The records required by subsections (a) and (b) of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.]

(a) REQUIREMENTS.—Any—

(1) owner, importer, consignee, importer of record, entry filer, or other party who—

(A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) agent of any party described in paragraph (1); or

(3) person whose activities require the filing of a declaration or entry, or both;

shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which—

(A) pertain to any such activity, or to the information contained in the records required by this Act in connection with any such activity; and

(B) are normally kept in the ordinary course of business.

(b) EXPORTATIONS TO FREE TRADE COUNTRIES.—

(1) DEFINITIONS.—As used in this subsection—

(A) The term "associated records" means, in regard to an exported good under paragraph (2), records associated with—

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

(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and

(iii) the production of the good.

For purposes of this subparagraph, the terms "indirect material," "material," "preferential tariff treatment," "used," and "value" have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.

(B) The term "NAFTA Certificate of Origin" means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO NAFTA COUNTRIES.—

(A) IN GENERAL.—Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the Certificate or copies thereof) and the associated records.

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

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

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

(II) a credit against a bond under section 312(d); or

(III) a refund, waiver, or reduction of duty under section 313(n)(2) or (o)(1);

must disclose to the Customs Service the information described in clause (ii).

(ii) INFORMATION REQUIRED.—Within 30 days after making a claim described in clause (i) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either—

(I) prepares a NAFTA Certificate of Origin for the article; or

(II) learns of the existence of such a Certificate for the article;

that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.

(iii) ACTION ON CLAIM.—If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (i) is made, the Customs Service may make such adjustments regarding the previous customs treatment of the article as may be warranted under the claim.

(3) EXPORTS UNDER THE CANADIAN AGREEMENT.—Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to the exportations.

[(c)PERIOD OF TIME.—The records required by subsections (a) and (b) shall be kept for such period of time, not to exceed 5 years from the date of entry or exportation, as appropriate, as the Secretary

shall prescribe; except that records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.]

(c) PERIOD OF TIME.—The records required by subsections (a) and (b) shall be kept for such periods of time as the Secretary shall prescribe; except that—

(1) no period of time for the retention of the records required under subsection (a) or (b)(3) may exceed 5 years from the date of entry or exportation, as appropriate;

(2) the period of time for the retention of the records required under subsection (b)(2) shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and

(3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.[4]

* * * * * * *

[(e) Any person who fails to retain records required by subsection (b) or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed $10,000.]

(e) SUBSECTION (b) PENALTIES.—

(1) RELATING TO NAFTA EXPORTS.—Any person who fails to retain records required by paragraph (2) of subsection (b) or the regulations issued to implement that paragraph shall be liable for—

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

(B) the general recordkeeping penalty that applies under the customs laws;

whichever penalty is higher.

(2) RELATING TO CANADIAN AGREEMENT EXPORTS.—Any person who fails to retain the records required by paragraph (3) of subsection (b) or the regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed $10,000.

SEC. 509. EXAMINATION OF BOOKS AND WITNESSES.

(a) AUTHORITY.—In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees [and taxes], *fees and taxes* due or duties, fees [and taxes], *fees and taxes* which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may—

[(1) examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry;

[(2) summon, upon reasonable notice—

[(A) the person who imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

[(B) any officer, employee, or agent of such person,

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[4] This version of section (c) takes effect on the date the Agreement enters into force with respect to the United States.

[(C) any person having possession, custody, or care of records relating to such importation, or]

(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that—

(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g);

(2) summon, upon reasonable notice—

(A) the person who—

(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

[(ii) exported merchandise, or knowingly caused merchandise to be exported, to Canada,]

(ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) or to Canada during such time as the United States Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada,[5]

(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

(iv) filed a declaration, entry, or drawback claim with the Customs Service;

(B) any officer, employee, or agent of any person described in subparagraph (A);

(C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or

(D) any other person he may deem proper[,];

to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (c)(I)(A), and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

[5] This version of subsection (ii) takes effect on the date the Agreement enters into force with respect to the United States.

(b) REGULATORY AUDIT PROCEDURES.—

(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.

(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.

(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the appropriate regional commissioner, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the appropriate regional commissioner provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, United States Code, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.

[(b)] *(c)* SERVICE OF SUMMONS.—A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.

[(c)] *(d)* SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.—
(1) FOR PURPOSES OF THIS SUBSECTION—

(A) The term "records" includes [statements, declarations, or documents] *those*—

* * * * * * *

(C) The term "third-party recordkeeper" means—

(i) any customhouse broker, *unless such customhouse is the importer of record on an entry*;

* * * * * * *

(2) If—

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the [import] transactions *described in section 508* of any person (other than the person summoned) who is identified in the description of the records contained in such summons;

then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

* * * * * * *

(4) Paragraph (2) of this subsection shall not apply to any summons—

(A) served on the person with respect to whose liability for duties, *fees,* or taxes the summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the [import] transactions *described in section 508* of an identified person have been made or kept.

* * * * * * *

(e) LIST OF RECORDS AND INFORMATION.—The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A).

(f) RECORDKEEPING COMPLIANCE PROGRAM.—

(1) IN GENERAL.—After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 508(a) may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

(2) CERTIFICATION.—A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it—

(A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

(C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.

(g) PENALTIES.—

(1) DEFINITION.—For purposes of this subsection, the term "information" means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A).

(2) EFFECTS OF FAILURE TO COMPLY WITH DEMAND.—Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) the following provisions apply:

(A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise—

(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 514 or 520, at the applicable column 1 general rate of duty;

except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

(3) AVOIDANCE OF PENALTY.—No penalty may be assessed under this subsection if the person can show—

(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

(4) PENALTIES NOT EXCLUSIVE.—Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for—

(A) a penalty imposed under section 592 for a material omission of the demanded information, or

(B) disciplinary action taken under section 641.

(5) REMISSION OR MITIGATION.—A penalty imposed under this section may be remitted or mitigated under section 618.

(6) CUSTOMS SUMMONS.—Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

(7) ALTERNATIVES TO PENALTIES.—

(A) IN GENERAL.—When a recordkeeper who—

(i) has been certified as a participant in the recordkeeping compliance program under subsection (f); and

(ii) is generally in compliance with the appropriate procedures and requirements of the program;

does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(B) CONTENTS OF NOTICE.—A notice of violation issued under subparagraph (A) shall—

(i) state that the recordkeeper has violated the recordkeeping requirements;

(ii) indicate the record of information which was demanded; and

(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.

(C) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(D) REGULATIONS.—The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.

SEC. 510. JUDICIAL ENFORCEMENT.

(a) ORDER OF COURT.—If any person summoned under section 509 of this Act does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof *and such court may assess a monetary penalty.*

* * * * * * *

[SEC. 513. CUSTOMS OFFICER'S IMMUNITY.

[No customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent might under this Act be entitled to protest or appeal from the decision of such officer.]

SEC. 513. CUSTOMS OFFICER'S IMMUNITY.

No customs officer shall be liable in any way to any person for or on account of—

(1) any ruling or decision regarding the appraisement or the classification of any imported merchandise or regarding the duties, fees, and taxes charged thereon,

(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

(3) any other matter of thing as to which any person might under this Act be entitled to protest or appeal from the decision of such officer.

[SEC. 514. FINALITY OF DECISIONS; PROTESTS.] ***SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.***

(a) FINALITY OF DECISIONS.—Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties), section 520 (relating to refunds and errors), and section 521 (relating to reliquidations on account of fraud) of this Act, decisions of

the [appropriate customs officer,] *Customs Service,* including the legality of all orders and findings entering into the same, as to—

(1) * * *

* * * * * * *

(5) the liquidation or reliquidation of an entry, *or reconciliation as to the issues contained therein,* or any modification thereof;

(6) the refusal to pay a claim for drawback; [and] *or*

(7) the refusal to reliquidate an entry under section 520(c) of this act[,]*;*

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the [appropriate customs officer, who] *Customs Service, which* shall take action accordingly.

(b) With respect to determinations made under section 303 of this Act of title VII of this Act which are reviewable under section 516A of this title, determinations of the [appropriate customs officer] *Customs Service* are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of *the North American Free Trade Agreement or* the United States-Canada Free-Trade Agreement.

(c) PROTESTS.—

(1) IN GENERAL.—[A protest of a decisions under subsection (a) shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor.] *A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—*

(A) each decision described in subsection (a) as to which protest is made;

(B) each category of merchandise affected by each decision set forth under paragraph (1);

(C) the nature of each objection and the reasons therefor; and

(D) any other matter required by the Secretary by regulation.

Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, *or with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act,* that is the subject of a protest are deemed to be part of a single protest. A protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 515 of this Act at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 485(d) and 557(b) of this Act, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by—

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback; [or]

(E) with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or

[(E)] *(F)* any authorized agent of any of the persons described in [clauses (A) through (D)] *clauses (A) through (E).*

[(2)] *(3)* TIME FOR FILING.—A protest of a decision, order, or finding described in subsection (a) shall be filed with [such customs officer] *the Customs Service* within ninety days after but not before—

(A) notice of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

(d) LIMITATION ON PROTEST OF RELIQUIDATION.—The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the [customs officer] *Customs Service* upon any question not involved in such reliquidation. A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not

being filed collusively to extend another authorized person's time to protest as specified in this subsection.

(e) ADVANCE NOTICE OF CERTAIN DETERMINATIONS.—Except as provided in subsection (f), an exporter or producer referred to in subsection (c)(2)(E) shall be provided notice in advance of an adverse determination of origin under section 202 of the North American Free Trade Agreement Implementation Act. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

(f) DENIAL OF PREFERENTIAL TREATMENT.—If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act—

(1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and

(2) the advance notice requirement in subsection (e) shall not apply to that person;

until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 202.

SEC. 515. REVIEW OF PROTESTS.

(a) * * *

* * * * * * *

(c) If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28, United States Code. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.

(d) If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate district director within 90 days after the date of the protest denial, void the denial of the protest.

* * * * * * *

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

(1) * * *

* * * * * * *

[(5) TIME LIMITS IN CASES INVOLVING CANADIAN MERCHANDISE.—Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the 31st day after—

[(A) the date of publication in the Federal Register of notice of any determination described in paragraph (1)(B) or any determination described in clause (i), (ii), or (iii) of paragraph (2)(B),

[(B) the date on which the Government of Canada receives notice of a determination described in clause (vi) of paragraph (2)(B), or

[(C) the date as of which—

[(i) a binational panel has dismissed the binational panel review for lack of jurisdiction, and

[(ii) any interested party seeking review under paragraph (1), (2), or (3) has provided timely notice under subsection (g)(3)(B),

except that if a request for an extraordinary challenge committee has been made with respect to the decision to dismiss, the date under this subparagraph shall not be earlier than the date on which such committee determines that such panel acted properly when it dismissed for lack of jurisdiction.]

(5) TIME LIMITS IN CASES INVOLVING MERCHANDISE FROM FREE TRADE AREA COUNTRIES.—Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

(A) For a determination described in paragraph (1)(B) or clause (i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

(B) For a determination described in clause (vi) of paragraph (2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.

(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8), the day after the date as of which—

(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and

(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this sub-

section has provided timely notice under subsection (g)(3)(B).

If such an interested party files a summons and complaint under this subsection after dismissal by the binational panel, and if a request for an extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss—

(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and

(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel decision to dismiss.

(D) For a determination for which review by the United States Court of International Trade is provided for—

(i) under subsection (g)(12)(B), the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or

(ii) under subsection (g)(12)(D), the day after the date that notice of settlement is published in the Federal Register.

(b) STANDARDS OF REVIEW.—

(1) * * *

* * * * * * *

(3) EFFECT OF DECISIONS BY *NAFTA OR* UNITED STATES-CANADA. BINATIONAL PANELS.—In making a decision in any action brought under subsection (a), a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 *of the NAFTA or* of the Agreement.

* * * * * * *

(f) DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * * * *

[(6) UNITED STATES SECRETARY.—The term "United States Secretary" means the secretary provided for in paragraph 4 of article 1909 of the Agreement.

[(7) CANADIAN SECRETARY.—The term "Canada Secretary" means the secretary provided for in paragraph 5 of article 1909 of the Agreement.]

(6) UNITED STATES SECRETARY.—The term "United States Secretary" means—

(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

(7) RELEVANT FTA SECRETARY.—The term "relevant FTA Secretary" means the Secretary—

(A) referred to in article 1908 of the NAFTA, or

(B) provided for in paragraph 5 of article 1909 of the Agreement,

of the relevant FTA country.

(8) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(9) RELEVANT FTA COUNTRY.—The term "relevant FTA country" means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

(10) FREE TRADE AREA COUNTRY.—The term "free trade area country" means the following:

(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.

(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.

(C) Canada for such time as—

(i) it is not a free trade area country under subparagraph (A); and

(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.

(g) REVIEW OF COUNTERVAILING DUTY AND ANTIDUMPING DUTY DETERMINATIONS INVOLVING [CANADIAN MERCHANDISE] *FREE TRADE AREA COUNTRY MERCHANDISE.*—

(1) DEFINITION OF DETERMINATION.—For purposes of this subsection, the term "determination" means a determination described in—

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (ii), (iii), or (vi) or paragraph (2)(B) of subsection (a),

if made in connection with a proceeding regarding a class or kind of [Canadian merchandise] *free trade area country merchandise*, as determined by the administering authority.

(2) EXCLUSIVE REVIEW OF DETERMINATION BY BINATIONAL PANELS.—If binational panel review of a determination is requested pursuant to article 1904 *of the NAFTA or* of the Agreement, then, except as provided in paragraphs (3) and (4)—

(A) the determination is not reviewable under subsection (a), and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW.—

(A) IN GENERAL.—A determination is reviewable under subsection (a) if the determination sought to be reviewed is—

(i) a determination as to which neither the United States [nor Canada] *nor the relevant FTA country* requested review by a binational panel pursuant to article 1904 *of the NAFTA or* of the Agreement.

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States [nor Canada] *nor the relevant FTA country* requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force *of the NAFTA or* of the Agreement, [or]

(iv) a determination which a binational panel has determined [under the paragraph (2)(A)] is not reviewable by the binational panel[.],

(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or

(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

(B) SPECIAL RULE.—[A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination.] *A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to—*

(i) the United States Secretary and the relevant FTA Secretary;

(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

(iii) the administering authority or the Commission, as appropriate.

Such notice is timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW FOR CONSTITUTIONAL ISSUES.—

(A) CONSTITUTIONALITY OF BINATIONAL PANEL REVIEW SYSTEM.—An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, *the North*

American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or the United States-Canada Free-Trade Implementation Agreement Act of 1988 implementing the binational panel dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought *only* in the United States Court of Appeals for the District of Columbia Circuit, *which shall have jurisdiction of such action.* [Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28, United States code.]

* * * * * * *

(5) LIQUIDATION OF ENTRIES.—

(A) APPLICATION.—In the case of a determination for which binational panel review is requested pursuant to article 1904 *of the NAFTA or* of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).

(B) GENERAL RULE.—In the case of a determination for which binational panel review is requested pursuant to article 1904 *of the NAFTA or* of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) SUSPENSION OF LIQUIDATION.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 *of the NAFTA or* of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) NOTICE.—At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary[, the Canadian Secretary,], *the relevant FTA Secretary,* and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) APPLICATION OF SUSPENSION.—If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E) or (F) of section 771(9), the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 *of the NAFTA or* of the Agreement.

* * * * * * *

(6) INJUNCTIVE RELIEF.—Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 *of the NAFTA or* of the Agreement, the provisions of subsection (c)(2) shall not apply.

(7) IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS UNDER ARTICLE 1904 *OF THE NAFTA OR THE AGREEMENT*.—

(A) [IN GENERAL.—] *ACTION UPON REMAND*.—If a determination is referred to a binational panel or extraordinary challenge committee under *the NAFTA or* the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

* * * * * * *

(8) REQUESTS FOR BINATIONAL PANEL REVIEW.—

(A) INTERESTED PARTY REQUESTS FOR BINATIONAL PANEL REVIEW.—

(i) GENERAL RULE.—An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) *of the NAFTA or* of the Agreement. Such request shall contain such information and be in such form, man-

ner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(ii) SUSPENSION OF TIME TO REQUEST BINATIONAL PANEL REVIEW UNDER THE NAFTA.—Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.

(B) SERVICE OF REQUEST FOR BINATIONAL PANEL REVIEW.—

(i) * * *

(ii) SERVICE BY UNITED STATES SECRETARY.—If an interested party to the proceeding requests binational panel review of a determination by filing a request with the [Canadian Secretary,] *relevant FTA Secretary,* the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) LIMITATION ON REQUEST FOR BINATIONAL PANEL REVIEW.—Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review [under article 1904 of the Agreement of a determination.] *of a determination under article 1904 of the NAFTA or the Agreement.*

(9) REPRESENTATION IN PANEL PROCEEDINGS.—In the case of binational panel proceedings convened under chapter 19 *of the NAFTA or* of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) NOTIFICATION OF CLASS OR KIND RULINGS.—In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the [Government of Canada received notice of the determination under article 1904(4) of the Agreement.] *Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.*

(11) SUSPENSION AND TERMINATION OF SUSPENSION OF ARTICLE 1904 OF THE NAFTA.—

(A) SUSPENSION OF ARTICLE 1904.—If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.

(B) TERMINATION OF SUSPENSION OF ARTICLE 1904.—If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

(12) JUDICIAL REVIEW UPON TERMINATION OF BINATIONAL PANEL OR COMMITTEE REVIEW UNDER THE NAFTA.—

(A) NOTICE OF SUSPENSION OR TERMINATION OF SUSPENSION OF ARTICLE 1904.—

(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

(B) TRANSFER OF FINAL DETERMINATIONS FOR JUDICIAL REVIEW UPON SUSPENSION OF ARTICLE 1904.—If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA—

(i) upon the request of an authorized person described in subparagraph (C), any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a); or

(ii) in a case in which—

(I) a binational panel review was completed fewer than 30 days before the suspension, and

(II) extraordinary challenge committee review has not been requested,

upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

(C) PERSONS AUTHORIZED TO REQUEST TRANSFER OF FINAL DETERMINATIONS FOR JUDICIAL REVIEW.—A request that a final determination be transferred to the Court of International Trade under subparagraph (B) may be made by—

(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA—

(I) the government of the relevant country described in subsection (f)(10)(A) or (B),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or

(ii) if a country described in subsection (f)(10)(A) or (B) made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA—

(I) the government of that country,

(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

(D)(i) TRANSFER FOR JUDICIAL REVIEW UPON SETTLEMENT.—If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

(ii) A request referred to in clause (i) is a request made by—

(I) the country referred to in clause (i),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

* * * * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

(1) EXCESS DEPOSITS.—Whenever it is ascertained on liquidation or reliquidation of an entry *or reconciliation* that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

* * * * * * *

(4) PRIOR TO LIQUIDATION.—Prior to the liquidation of an entry *or reconciliation*, whenever it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid by reason of clerical error.

* * * * * * *

(c) Notwithstanding a valid protest was not filed, the [appropriate customs officer] *Customs Service* may, in accordance with regulations prescribed by the Secretary, reliquidate an entry *or reconciliation* to correct—

(1) a clerical error, mistake of fact, or other inadvertence, *whether or not resulting from or contained in electronic transmission,* not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the [appropriate customs officer] *Customs Service* within one year after the date of liquidation or exaction; or

(2) any assessment of duty on household or personal effects in respect of which an application for refund has been filed, with such employee as the Secretary of the Treasury shall designate, within one year after the date of entry.

[(d) If a determination is made to reliquidate an entry as a result of a protest filed under section 514 of this Act or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as increased or additional duties under section 505(c) of this Act at the annual rate established pursuant to that section and determined as of the 15th day after the date of liquidation or reliquidation. The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 28, United States Code, whichever occurs first.]

(d) Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

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

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1)); and

(3) such other documentation relating to the importation of the goods as the Customs Service may require.

[SEC. 521. RELIQUIDATION ON ACCOUNT OF FRAUD.

[If the appropriate customs officer finds probable cause to believe there is fraud in the case, he may reliquidate an entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation.]

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SEC. 526. MERCHANDISE BEARING AMERICAN TRADE-MARK.

(a) * * *

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(e) Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the goods seized—

(1) * * *

* * * * * * *

(3) more than [1 year] *90 days* after the date of forfeiture, by sale by [appropriate customs officers] *the Customs Service* at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or

* * * * * * *

SEC. 529. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.

The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government agency for any reason.

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Part IV—Transportation in Bond and Warehousing of Merchandise

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SEC. 553A. RECORDKEEPING FOR MERCHANDISE TRANSPORTED BY PIPELINE.

Merchandise in Customs custody that is transported by pipeline may be accounted for on a quantitative basis, based on the bill of lading, or equivalent document of receipt, issued by the pipeline carrier. Unless the Customs Service has reasonable cause to suspect fraud, the Customs Service may accept the bill of lading, or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee to maintain identity. The shipper,

pipeline operator, and consignee shall be subject to the record-keeping requirements of sections 508 and 509.

* * * * * * *

SEC. 557. ENTRY FOR WAREHOUSE—WAREHOUSE PERIOD—DRAWBACK.

(a)*(1)* Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner purchaser, importer, or consignee. Such merchandise may be withdrawn, at any time within 5-years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port[: *Provided,* That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation.]*; except that—*

(A) the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation; and

(B) turbine fuel may be withdrawn for use under section 309 without the payment of duty if an amount equal to the quantity of fuel withdrawn is shown to be used within 30 days after the day of withdrawal, but duties (together with interest payable from the date of the withdrawal at the rate of interest established under section 6621 of title 26, United States Code) shall be deposited by the 40th day after the day of withdrawal on fuel that was withdrawn in excess of the quantity shown to have been so used during such 30-day period.

(2) Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within 5 years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

* * * * * * *

SEC. 562. MANIPULATION IN WAREHOUSE.

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than

one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same; except that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom [without payment of duties]—

[(1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that—

[(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

[(B) is a drawback eligible good under section 204(a) of such Act of 1988;

[(2) for exportation to any foreign country except Canada; and

[(3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.]

(1) without payment of duties for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the merchandise is of a kind described in any of paragraphs (1) through (8) of section 203(a) of that Act;

(2) for exportation to a NAFTA country if the merchandise consists of goods subject to NAFTA drawback, as defined in section 203(a) of that Act, except that—

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

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

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

(ii) the total amount of customs duties paid on the merchandise to the NAFTA country;

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

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

(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

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

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

merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph [(1)] *(4)* of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse.

* * * * * * *

SEC. 565. CARTAGE.

[The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond, in a penal sum to be fixed by such customs officer, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted.] *The cartage of merchandise entered for warehouse shall be done by—*

(1) cartmen appointed and licensed by the Customs Services; or

(2) carriers designated under section 551 to carry bonded merchandise;

who shall give bond, in a penal sum to be fixed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the customs officer as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.

* * * * * * *

Part V—Enforcement Provisions

* * * * * * *

[SEC. 583. CERTIFICATION OF MANIFEST.

[The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the original manifest to the inspection thereof and return the same to the master of other person in charge.]

SEC. 584. FALSITY OR LACK OF MANIFEST—PENALTIES.

(a) GENERAL RULE.—(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the [officer demanding the same] *officer (whether of the Customs Service or the Coast Guard) demanding the same* shall be liable to a penalty of $1,000, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest" immediately after "or the owner of such vessel or vehicle shall be liable to a penalty equal to the lesser of $10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest" immediately after "or the owner of such vessel or vehicle shall be subject to a penalty of $1,000: *Provided,* That if the [appropriate customs officer] *Customs Service* shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason or clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the

term "clerical error" means a nonnegligent, inadvertent, or typographical mistake in the preparation; assembly, or submission *(electronically or otherwise)* of the manifest.

(2) If any of such merchandise so found consists of heroin, morphine, or cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine; isonipecaine, or opiate being in such merchandise shall be liable to a penalty of $1,000 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise shall be liable to a penalty of $500 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of $200 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 594 of this Act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the [appropriate customs officer] *Customs Service,* is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms "opiate" and "marihuana" shall have the same meaning given those terms by sections 102(17) and 102(15), respectively, of the Controlled Substances Act.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 7 of the Anti-Smuggling Act and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided,* That if the [appropriate customs officer] *Customs Service* shall be satisfied that the certificate re-

quired for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.

(b) PROCEDURES.—(1) If [the appropriate customs officer] *the Customs Service* has reasonable cause to believe that there has been a violation of subsection (a)(1) and determines that further proceedings are warranted, [he] *the Customs Service* shall issue or *electronically transmit* to the person concerned a [written] notice of [his intention] *intent* to issue *or electronically transmit* a claim for a monetary penalty. Such notice shall—

(A)* * *

* * * * * * *

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

No notice is required under this subsection for any violation of subsection (a)(1) for which the proposed penalty is $1,000 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), [the appropriate customs officer] *the Customs Service* shall determine whether any violations of subsection (a)(1), as alleged in the notice, has occurred. If [such officer] *the Customs Service* determines that there was no violation, [he] *the Customs Service* shall promptly issue *or electronically transmit* a [written] statement of the determination to the person to whom the notice was sent. If [such officer] *the Customs Service* determines that there was a violation, [he] *the Customs Service* shall issue *or electronically transmit* a [written] penalty claim to such person. The [written] penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

[SEC. 585. DEPARTURE BEFORE REPORT OR ENTRY.

[If any vessel or vehicle from a foreign port or place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a report or entry under the provisions of this Act, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of $5,000, and the person in charge of such vehicle shall be liable to a penalty of $500, and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the United States.]

SEC. 586. UNLAWFUL UNLADING OR TRANSSHIPMENT

(a) The master of any vessel from a foreign port or place, *or of a hovering vessel which has received or delivered merchandise while outside the territorial sea,* who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

(b) The master of any vessel from a foreign port or place, *or of a hovering vessel which has received or delivered merchandise while outside the territorial sea,* who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transshipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise by not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(c) The master of any vessel from a foreign port or place, *or of a hovering vessel which has received or delivered merchandise while outside the territorial sea,* who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists, of any spirits, wines, or other alcoholic liquors, to be unlade without permit to unlade, at any place upon the high seas adjacent to the customs water of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

* * * * * * *

(f) Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify [the appropriate customs officer of the] *the Customs Service at the* district within which such unlading or transshipment has occurred, or [the appropriate customs officer within the] *the Customs Service at the* district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if [the appropriate customs officer is] *the Customs Service is* satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred.

* * * * * * *

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

(a) PROHIBITION.—

(1) GENERAL RULE.—Without regard to whether the United States is or may be deprived of all or a portion of any lawful

duty thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document *or electronically transmitted data or information*, written or oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. *The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.*

(b) PROCEDURES.—

(1) PRE-PENALTY NOTICE.—

(A) IN GENERAL.—If the [appropriate customs officer] *Customs Service* has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, [he] *it* shall issue to the person concerned a written notice of [his] *its* intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

* * * * * * *

(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the [appropriate customs officer] *Customs Service* shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If [such officer] *the Customs Service* determines that there was no violation, [he] *it* shall promptly issue a written statement of the determination to the person to whom the notice was sent. If [such officer] *the Customs Service* determines that there was a violation, [he] *it* shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the [appropriate customs officer] *Customs Service* shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

(4) PRIOR DISCLOSURE.—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the [time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his] *time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its* calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the [time of disclosure or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his] *time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its* calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. *For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.*

(5) PRIOR DISCLOSURE REGARDING NAFTA CLAIMS.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim for preferential tariff treatment under section 202 of the North American Free Trade Agreement Implementation Act if the importer—

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 508(b)(1)) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

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

* * * * * * *

(d) DEPRIVATION OF LAWFUL DUTIES, *TAXES OR FEES.*—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties, *taxes, or fees* as a result of a violation of subsection (a), [the appropriate customs officer] *the Customs Service* shall require that such lawful duties, *taxes or fees* be restored, whether or not a monetary penalty is assessed.

* * * * * * *

(f) FALSE CERTIFICATIONS REGARDING EXPORTS TO NAFTA COUNTRIES.—

(1) IN GENERAL.—Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 508(b)(1)) that a good to be exported to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) qualifies under the rules of origin set out in section 202 of that Act.

(2) APPLICABLE PROVISIONS.—The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of paragraph (1), except that—

(A) subsection (d) does not apply, and

(B) subsection (c)(5) applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

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

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

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

SEC. 593A. PENALTIES FOR FALSE DRAWBACK CLAIMS.

(A) PROHIBITION.—

(1) GENERAL RULE.—No person, by fraud, or negligence—

(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

(ii) any omission which is material; or

(B) may aid or abet any other person to violate subparagraph (A).

(2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere noninternational repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) PROCEDURES.—

(1) PREPENALTY NOTICE.—

(A) IN GENERAL.—If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, the Customs Service shall issue to the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall—

(i) identify the drawback claim;

(ii) set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud or negligence;

(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) EXCEPTIONS.—The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

(C) PRIOR APPROVAL.—No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If the Customs Service determines that there was

no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

(c) MAXIMUM PENALTIES.—

(1) FRAUD.—A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) NEGLIGENCE.—

(A) IN GENERAL.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

(B) REPETITIVE VIOLATIONS.—If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

(3) PRIOR DISCLOSURE.—

(A) IN GENERAL.—Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1986 on the amount of actual revenue of which the United States is or may be deprived during the period that—

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.

(B) CONDITION AFFECTING PENALTY LIMITATIONS.—The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under subsection (c) apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

(C) BURDEN OF PROOF.—The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(4) COMMENCEMENT OF INVESTIGATION.—For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) EXCLUSIVITY.—Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection (a).

(d) DEPRIVATION OF LAWFUL REVENUE.—Notwithstanding section 514, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a), the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(e) DRAWBACK COMPLIANCE PROGRAM.—

(1) IN GENERAL.—After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

(2) CERTIFICATION.—A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

(f) ALTERNATIVES TO PENALTIES.—

(1) IN GENERAL.—When a party that—

(A) has been certified as a participant in the drawback compliance program under subsection (e); and

(B) is generally in compliance with the appropriate procedures and requirements of the program;

commits a violation of subsection (a), the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(2) CONTENTS OF NOTICE.—A notice of violation issued under paragraph (1) shall—

(A) state that the party has violated subsection (a);

(B) explain the nature of the violation; and

(C) warn the party that future violations of subsection (a) may result in the imposition of monetary penalties.

(3) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(g) REPETITIVE VIOLATIONS.—

(1) A party who has been issued a written notice under subsection (f)(1) and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

(A) 2D VIOLATION.—An amount not to exceed 20 percent of the loss of revenue.

(B) 3D VIOLATION.—An amount not to exceed 50 percent of the loss of revenue.

(C) 4TH AND SUBSEQUENT VIOLATIONS.—An amount not to exceed 100 percent of the loss of revenue.

(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) commits an alleged violation which was not repetitive, the party shall be issued a "warning letter", and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

(h) REGULATION.—The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsection (g), a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

(i) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.

* * * * * * *

SEC. 596. AIDING UNLAWFUL IMPORTATION.

* * * * * * *

(a) * * *

[(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited.]

(c) Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

(1) The merchandise shall be seized and forfeited if it—

(A) is stolen, smuggled, or clandestinely imported or introduced;

(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law; or

(C) is a contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781).

(2) The merchandise may be seized and forfeited if—

(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;

(B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;

(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 42, 43, or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125, or 1127), section 506 or 509 of title 17, United States Code, or section 2318 or 2320 of title 18, United States Code);

(D) it is trade dress merchandise involved in the violation of a court order citing section 43 of such Act of July 5, 1946 (15 U.S.C. 1125);

(E) it is merchandise which is marked intentionally in violation of section 304; or

(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 304.

(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 499 unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification of value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 592.

(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—

(A) remit the forfeiture under section 618, or

(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

* * * * * * *

SEC. 612. SEIZURE; SUMMARY SALE.

(a) Whenever it appears to [the appropriate customs officer] *the Customs Service* that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 607, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, [such officer] *the Customs Service* shall proceed forthwith to advistise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607, [such officer] *the Customs Service* shall forthwith transmit [the appraiser's return and his] *its* report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the

proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by [the customs officer] *the Customs Service* or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

[(b) If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.]

(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.

* * * * * * *

SEC. 621. LIMITATION OF ACTIONS.

No suit or action to recover *any duty under section 593A(d), or* any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was [discovered: *Provided,* That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.] *discovered; except that—*

(1) in the case of an alleged violation of section 592 or 593A, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.

* * * * * * *

SEC. 623. BONDS AND OTHER SECURITY.

(a) * * *

(b) Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond *and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service,* and fix the amount of penalty thereof, whether for the

payment of liquidated damages or of a penal sum: *Provided,* That in the case of an alleged violation of section 592 of this Act arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: *Provided further,* That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

* * * * * * *

(d) No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond. *Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.*

* * * * * * *

[SEC. 625. PUBLICATION OF DECISIONS.

[Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this Act with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.]

SEC. 625. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.

(a) PUBLICATION.—Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

(b) APPEALS.—A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.

(c) MODIFICATION AND REVOCATION.—A proposed interpretive ruling or decision which would—

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

(d) PUBLICATION OF CUSTOMS DECISIONS THAT LIMIT COURT DECISIONS.—A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

(e) PUBLIC INFORMATION.—The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5, United States Code.

* * * * * * *

SEC. 628. EXCHANGE OF INFORMATION.

(a) * * *

* * * * * * *

(c) The Secretary may authorize customs officers to exchange information with any government agency of a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the Secretary—

(1) reasonably believes the exchange of information is necessary to implement chapter 3, 4, or 5 of the North American Free Trade Agreement, and

(2) obtains assurances from such country that the information will be held in confidence and used only for governmental purposes.

* * * * * * *

SEC. 630. AUTHORITY TO SETTLE CLAIMS.

(a) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Secretary may settle, for not more than $50,000 in any one case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Customs Service and acting within the scope of his or her employment.

(b) LIMITATIONS.—The Secretary may not pay a claim under subsection (a) that—

(1) concerns commercial property;

(2) is presented to the Secretary more than 1 year after it occurs; or

(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

(c) FINAL SETTLEMENT.—A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.

SEC. 631. USE OF PRIVATE COLLECTION AGENCIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.

(b) CONTRACT REQUIREMENTS.—Any contract entered into under subsection (a) shall provide that—

(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to—

(A) section 552a of title 5, United States Code, to the extent provided in subsection (m) as such section; and

(B) laws and regulations of the United States Government and State governments related to debt collection practices.

Part VI—Miscellaneous Provisions

SEC. 641. CUSTOMS BROKERS.

(a) DEFINITIONS.—As used in this section:

(1) The term "customs broker" means any person granted a customs broker's license by the Secretary under subsection (b).

(2) The term "customs business" means those activities involving transaction with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. *It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.*

* * * * * * *

(c) CUSTOMS BROKER'S PERMITS.—

[(1) IN GENERAL.—Each person granted a customs broker's license under subsection (b) shall—

[(A) be issued a permit, in accordance with regulations prescribed under this section, for each customs district in which that person conducts customs business; and

[(B) except as provided in paragraph (2), regularly employ in each customs district for which a permit is so issued at least one individual who is licensed under subsection (b)(2) to exercise responsible supervision and con-

trol over the customs business conducted by that person in that district.]

(1) IN GENERAL.—Each person granted a customs broker's license under subsection (b) shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.

* * * * * * *

(4) APPOINTMENT OF SUBAGENTS.—Notwithstanding subsection (c)(1), upon the implementation by the Secretary under section 413(b)(2) of the component of the National Customs Automation Program referred to in section 411(a)(2)(B), a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.

(d) DISCIPLINARY PROCEEDINGS.—

(1) * * *

(2) PROCEDURES.—

(A) * * *

(B) REVOCATION OR SUSPENSION.—[The appropriate customs officers] *The Customs Service* may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or [the appropriate customs officer] *the Customs Service* determines that the revocation or suspension is still warranted, [he] *it* shall notify the customs broker in writing of a hearing to be held within [15] *30* days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5, United States Code, who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the

proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to [the appropriate customs officer and the customs broker; they] *the Customs Service and the customs broker; which* shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with [his] *the* findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth his findings of fact and the reasons [for his decision] *for the decision*. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed $30,000, then was contained in the notice to show cause.

* * * * * * *

(f) REGULATIONS BY THE SECRETARY.—The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the [United States Customs Service.] *Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.*

* * * * * * *

TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

* * * * * * *

Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) * * *

* * * * * * *

[(18)] *(21)* UNITED STATES-CANADA AGREEMENT.—The term "United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.

(22) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(23) ENTRY.—The term "entry" includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in section 401(s), that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this title, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

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SEC. 777. ACCESS TO INFORMATION.

(a) * * *

* * * * * * *

(f) DISCLOSURE OF PROPRIETARY INFORMATION UNDER PROTECTIVE ORDERS ISSUED PURSUANT TO *THE NORTH AMERICAN FREE TRADE AGREEMENT OR* THE UNITED STATES-CANADA AGREEMENT.—

(1) ISSUANCE OF PROTECTIVE ORDERS.—

(A) IN GENERAL.—If binational panel review of a determination under this title is requested pursuant to article 1904 of *the NAFTA or* the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of *the NAFTA or* the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material in the administrative record made during the proceeding in question. If the administrating authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel *or extraordinary challenge committee* finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel *or committee* as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).

(B) AUTHORIZED PERSONS.—For purposes of this subsection, the term "authorized persons" means—

(i) * * *

* * * * * * *

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of *the NAFTA or* the Agreement, and

(iv) any officer or employee of the [Government of Canada designated by an authorized agency of Canada] *Government of a free trade area country (as defined in section 516A(f)(10)) designated by an authorized agency of such country* to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under chapter 19 of *the NAFTA or* the Agreement.

* * * * * * *

(2) CONTENTS OF PROTECTIVE ORDER.—Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding, *including any extraordinary challenge,* equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) PROHIBITED ACTS.—It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized [agency of Canada] *agency of a free trade area country (as defined in section 516A(f)(10))* to protect proprietary material during binational panel *or extraordinary challenge committee* review pursuant to article 1904 of *the NAFTA or* the United States-Canada Agreement.

(4) SANCTIONS FOR VIOLATION OF PROTECTIVE ORDERS.—Any person, *except a judge appointed to a binational panel or an extraordinary challenge committee under section 402(b) of the North American Free Trade Agreement Implementation Act,* who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering au-

thority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, or inducement of a violation or receipt of information with reason to know that such information was disclosed in violation, of an undertaking entered into by any person with an authorized [agency of Canada] *agency of a free trade area country (as defined in section 516A(f)(10)).*

SECTION 3 OF THE ACT OF JUNE 18, 1934 (COMMONLY KNOWN AS THE FOREIGN TRADE ZONES ACT)

AN ACT To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes

* * * * * * *

SEC. 3. (a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided,* That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several

products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further,* That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further,* That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further,* That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615 (f) of the Tariff Act of 1930, as amended: *Provided further,* That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraph 367 or paragraph 368 of the Tariff Act of 1930, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this Act prior to July 1, 1949: *Provided further,* That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufac-

tured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section, may, on such importation, be entered as American goods returned: *Provided further, That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 2(4) of that Act, without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930) in an amount that does not exceed the lesser of (1) the total amount of cutoms duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country: Provided further, That, if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates,* with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, No article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada [on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988,] *during the period such Agreement is in operation* without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested.

* * * * * * *

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

(1) * * *

* * * * * * *

[(5) For the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)), $5.]

(5)(A) For fiscal years 1994, 1995, 1996, and 1997, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States, $6.50.

(B) For fiscal year 1998 and each fiscal year thereafter, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A) of this section), $5.

(b) LIMITATION ON FEES.—(1) No fee may be charged under subsection (a) for customs services provided in connection with—

(A) the arrival of any passenger whose journey—

(i) * * *

* * * * * * *

Subparagraph (A) shall not apply to fiscal years 1994, 1995, 1996, and 1997.

* * * * * * *

[(10) The fee charged under subsection (a) (9) or (10) of this section with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) shall be in accordance with article 403 of the United States-Canada Free-Trade Agreement. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.]

(10)(A) The fee charged under subsection (a) (9) or (10) with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement) when the United States-Canada Free-Trade Agreement is in force shall be in accordance with section 403 of that Agreement.

(B) For goods qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, the fee under subsection (a) (9) or (10)—

(i) may not be charged with respect to goods that qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement, for such time as Canada is a NAFTA country, as defined in section 2(4) of such Implementation Act; and

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country.

Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(f) DISPOSITION OF FEES.—There is established in the general fund of the Treasury a separate account which shall be known as the "Customs User Fee Account". Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) [except that portion of such fees that

is required under paragraph (3) for the direct reimbursement of appropriations] *except—*

(A) the portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations, and

(B) the portion of such fees that is determined by the Secretary to be excess fees under paragraph (5).

* * * * * * *

(3)(A) The Secretary of the Treasury, in accordance with section 524 of the Tariff Act of 1930 and subject to subparagraph (B), shall directly reimburse, from the fees collected under subsection (a) [(other than subsection (a) (9) or (10)] *other than the fees under subsection (a) (9) and (10) and the excess fees determined by the Secretary under paragraph (5)),* each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary—

(i) * * *

* * * * * * *

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed [under subsection (a)] *under subsection (a) (other than the excess fees determined by the Secretary under paragraph (5))* should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

(5) At the close of each of fiscal years 1994, 1995, 1996, and 1997, the Secretary of the Treasury shall determine the amount of the fees collected under paragraph (5)(A) of subsection (a) for that fiscal year that exceeds the amount of such fees that would have been collected for such fiscal year if the fees that were in effect on the day before the effective date of this paragraph applied to such fiscal year. The amount of the excess fees determined under the preceding sentence shall be deposited in the Customs User Fee Account and shall be available for reimbursement of inspectional costs (including passenger processing costs) not otherwise reimbursed under this section, and shall be available only to the extent provided in appropriations Acts.

(g) REGULATIONS AND ENFORCEMENT.—(1) [In addition to the regulations required under paragraph (2), the] *The* Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes

imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

[(2) The Secretary of the Treasury shall prescribe regulations governing the work shifts of customs personnel at airports. Such regulations shall provide, among such other factors considered appropriate by the Secretary, that—

[(A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime;

[(B) the work shifts will not be arbitrarily reduced or compressed; and

[(C) consultation with the Advisory Committee on Commercial Operations of the United States Customs Service (established under section 9501(c) of the Omnibus Budget Reconciliation Act of 1987) will be carried out before adjustments are made in the work shifts.

[(3)] *(2)* Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee prescribed under subsection (a) of this section, and with respect to persons liable therefor, as if such fee is a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the amount of the fee assessed. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any fee prescribed under subsection (a) of this section shall be treated as if such fee is a customs duty.

* * * * * * *

(j) EFFECTIVE DATES.—(1) * * *

* * * * * * *

(3) Fees may not be charged under subsection (a) after [September 30, 1998.] *September 30, 2003.*

* * * * * * *

TRADE ACT OF 1974

* * * * * * *

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

* * * * * * *

CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

* * * * * * *

SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.

(a) * * *

* * * * * * *

(f) SPECIAL RULE FOR ACTIONS AFFECTING UNITED STATES CULTURAL INDUSTRIES.—

(1) IN GENERAL.—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the Trade Representative shall identify any act, policy, or practice of Canada which—

(A) affects cultural industries,

(B) is adopted or expanded after December 17, 1992, and

(C) is actionable under article 2106 of the North American Free Trade Agreement.

(2) SPECIAL RULES FOR IDENTIFICATIONS.—For purposes of section 302(b)(2)(A), an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2), unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall—

(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 135, and appropriate officers of the Federal Government, and

(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b).

(3) CULTURAL INDUSTRIES.—For purposes of this subsection, the term "cultural industries" means persons engaged in any of the following activities:

(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

(B) The production, distribution, sale, or exhibition of film or video recordings.

(C) The production, distribution, sale, or exhibition of audio or video music recordings.

(D) The publication, distribution, or sale of music in print or machine readable form.

(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

* * * * * * *

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

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

* * * * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter and part 1 of title III of the North American Free Trade Agreement Implementation Act.

* * * * * * *

(d) PROVISIONAL RELIEF.—

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product *or citrus product* that is like or directly competitive with an imported perishable agricultural product *or citrus product* may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product *or citrus product*; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

* * * * * * *

(C) If a petition filed under subsection (a)—

(i) alleges injury from imports of a perishable agricultural product *or citrus product* that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under paragraph (2) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product *or citrus product* are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product *or citrus product*, and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

* * * * * * *

(5) For purposes of this subsection:

(A) The term "citrus product" means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.

[(A)] *(B)* A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

(i) whether the article has—

* * * * * * *

[(B)] *(C)* The term "provisional relief" means—

(i) any increase in, or imposition of, any duty;

* * * * * * *

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

Subchapter A—Petitions and Determinations

SEC. 221. PETITIONS.

(a) A petition for a certification of eligibility to apply for adjustment assistance under this [chapter] *subchapter* may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their

certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

* * * * * * *

SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this [chapter] *subchapter* if he determines—

(1) * * *

* * * * * * *

SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR.

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this [chapter] *subchapter* covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

* * * * * * *

SEC. 225. BENEFIT INFORMATION TO WORKERS.

(a) * * *

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A *or subchapter D* of this chapter—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A *or subchapter D* in newspapers of general circulation in the areas in which such workers reside.

* * * * * * *

Subchapter C—General Provisions

* * * * * * *

SEC. 245. AUTHORIZATION OF APPROPRIATIONS.

[There] *(a) IN GENERAL.—There* are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998, such sums as may be necessary to carry out the purposes of this chapter, *other than subchapter D.*

(b) SUBCHAPTER D.—There are authorized to be appropriated to the Department of Labor, for each of fiscal years 1994, 1995, 1996,

1997, and 1998, such sums as may be necessary to carry out the purposes of subchapter D of this chapter.

* * * * * * *

SEC. 249A. NONDUPLICATION OF ASSISTANCE.

No worker may receive assistance relating to a separation pursuant to certifications under both subchapters A and D of this chapter.

Subchapter D—NAFTA Transitional Adjustment Assistance Program

SEC. 250. ESTABLISHMENT OF TRANSITIONAL PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified as eligible to apply for adjustment assistance under this subchapter pursuant to a petition filed under subsection (b) if the Secretary determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and either—

(A) that—

(i) the sales or production, or both, of such firm or subdivision have decreased absolutely,

(ii) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and

(iii) the increase in imports under clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(B) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—The term "contributed importantly", as used in paragraph (1)(A)(iii), means a cause which is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this subchapter may be filed by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which such workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—Upon receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1) (and for purposes of this clause the criteria described under subparagraph (A)(iii) of such subsection shall be disregarded), and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons therefor, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b), shall determine whether the petition meets the criteria described in subsection (a)(1). Upon a determination that the petition meets such criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—Upon denial of certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of subchapter A to determine if the workers may be certified under such subchapter.

(d) COMPREHENSIVE ASSISTANCE.—Workers covered by certification issued by the Secretary under subsection (c) shall be provided, in the same manner and to the same extent as workers covered under a certification under subchapter A, the following:

(1) Employment services described in section 235.

(2) Training described in section 236, except that notwithstanding the provisions of section 236(a)(2)(A), the total amount of payments for training under this subchapter for any fiscal year shall not exceed $30,000,000.

(3) Trade readjustment allowances described in sections 231 through 234, except that—

(A) the provisions of sections 231(a)(5)(C) and 231(c), authorizing the payment of trade readjustment allowances upon a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of such allowances under this subchapter; and

(B) notwithstanding the provisions of section 233(b), in order for a worker to qualify for trade readjustment allowances under this subchapter, the worker shall be enrolled in a training program approved by the Secretary under section 236(a) by the later of—

(i) the last day of the 16th week of such worker's initial unemployment compensation benefit period, or

(ii) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker.

In cases of extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for a period not to exceed 30 days .

(4) Job search allowances described in section 237.

(5) Relocation allowances described in section 238.

(e) ADMINISTRATION.—The provisions of subchapter C shall apply to the administration of the program under this subchapter in the same manner and to the same extent as such provisions apply to the administration of the program under subchapters A and B, except that the agreement between the Secretary and the States described in section 239 shall specify the procedures that will be used to carry out the certification process under subsection (c) and the procedures for providing relevant data by the Secretary to assist the States in making preliminary findings under subsection (b).

* * * * * * *

CHAPTER 5—MISCELLANEOUS PROVISIONS

* * * * * * *

SEC. 284. JUDICIAL REVIEW.

(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 *or section 250(c)* of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

* * * * * * *

SEC. 285. TERMINATION.

(a) * * *

* * * * * * *

(c) [No] *(1) Except as provided in paragraph (2), no* assistance, vouchers, allowances, or other payments may be provided under chapter 2, and no technical assistance may be provided under chapter 3, after September 30, 1998.

(2)(A) Except as provided in subparagraph (B), no assistance, vouchers, allowances, or other payments may be provided under subchapter D of chapter 2 after the day that is the earlier of—

(i) September 30, 1998, or

(ii) the date on which legislation, establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by such subchapter D, becomes effective.

(B) Notwithstanding subparagraph (A), if, on or before the day described in subparagraph (A), a worker—

(i) is certified as eligible to apply for assistance, under subchapter D of chapter 2; and

(ii) is otherwise eligible to receive assistance in accordance with section 250,

such worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements of such section.

* * * * * * *

MEAT IMPORT ACT OF 1979

SEC. 2. (a) This section may be cited as the "Meat Import Act of 1979".

(b) For purposes of this section—

(1) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(2) The term "meat articles" means the articles provided for in the Tariff Schedules of the United States (19 U.S.C. 1202) under—

(A) item 106.10 (relating to fresh, chilled, or frozen cattle meat);

(B) items 106.22 and 106.25 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and

(C) items 107.55 and 107.62 (relating to prepared and preserved beef and veal (except sausage)), if the articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved.

[Such term does not include any article described in subparagraph (A), (B), or (C) originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988).]

(3) The term "meat articles" does not include any article described in paragraph (2) that—

(A) originates in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act), or

(B) originates in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies such Agreement to, Canada.

[(3)] *(4)* The term 'Secretary' means the Secretary of Agriculture.

(5) The term "NAFTA Act" means the North American Free Trade Agreement Implementation Act.

(6) The term "NAFTA country" has the meaning given such term in section 2(4) of the NAFTA Act.

* * * * * * *

(f)(1) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than (A) 1,193,000,000 pounds if no import limitation on Canadian products is in effect under subsection (1), or (B) 1,250,000,000 pounds if an import limitation on Canadian products is in effect under subsection (1). The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in item 107.61 of the Tariff Schedules of the United States (relating to high-quality beef specially processed into fancy cuts[.] *, except that the President may exclude any such article originating in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act) or, if paragraph (3)(B) applies, any such article originating in Canada as determined in accordance with such paragraph (3)(B).*

* * * * * * *

(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries other than Canada *and Mexico* on the basis of the shares of the United States market for meat articles such countries other than Canada *and Mexico* supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may affect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

* * * * * * *

SECTION 358e OF THE AGRICULTURAL ADJUSTMENT ACT OF 1938

SEC. 358e. MARKETING PENALTIES AND DISPOSITION OF ADDITIONAL PEANUTS FOR 1991 THROUGH 1997 CROPS OF PEANUTS.

(a) * * *

* * * * * * *

(d) HANDLING AND DISPOSAL OF ADDITIONAL PEANUTS.—

(1) * * *

* * * * * * *

[(6) REENTRY OF EXPORTED PEANUTS.—If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer thereof shall be subject to a penalty at a

rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.]

(6) REENTRY OF EXPORTED PEANUTS.—

(A) PENALTY.—If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer of the peanuts shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.

(B) RECORDS.—Each person, firm, or handler who imports peanuts into the United States shall maintain such records and documents as are required by the Secretary to ensure compliance with this subsection.

* * * * * * *

SECTION 1542 OF THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1990

SEC. 1542. PROMOTION OF AGRICULTURAL EXPORTS TO EMERGING DEMOCRACIES.

(a) * * *

* * * * * * *

(d) E (KIKA) DE LA GARZA AGRICULTURAL FELLOWSHIP PROGRAM.—The Secretary of Agriculture (hereafter in this section referred to as the "Secretary") shall establish a program, to be known as the "E (Kika) de la Garza Agricultural Fellowship Program", to develop agricultural markets in emerging democracies and to promote cooperation and exchange of information between agricultural institutions and agribusinesses in the United States and the Soviet Union, as follows:

(1) * * *

* * * * * * *

(3) AGRICULTURAL FELLOWSHIPS FOR NAFTA COUNTRIES.—

(A) IN GENERAL.—The Secretary shall grant fellowships to individuals from countries that are parties to the North American Free Trade Agreement (referred to in this paragraph as "NAFTA") to study agriculture in the United States, and to individuals in the United States to study agriculture in other NAFTA countries.

(B) PURPOSE.—The purpose of fellowships granted under this paragraph is—

(i) to allow the recipients to expand their knowledge and understanding of agricultural systems and practices in other NAFTA countries;

(ii) to facilitate the improvement of agricultural systems in NAFTA countries; and

(iii) to establish and expand agricultural trade linkages between the United States and other NAFTA countries.

(C) ELIGIBLE RECIPIENTS.—The Secretary may provide fellowships under this paragraph to agricultural producers

and consultants, government officials, and other individuals from the private and public sectors.

(D) ACCEPTANCE OF GIFTS.—The Secretary may accept money, funds, property, and services of every kind of gift, devise, bequest, grant, or otherwise, and may in any manner, dispose of all of the holdings and use the receipts generated from the disposition to carry out this paragraph. Receipts under this paragraph shall remain available until expended.

(E) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to carry out this paragraph.

* * * * * * *

SECTION 104 OF TITLE 35, UNITED STATES CODE

[§ 104. Invention made abroad

[In proceedings in the Patent and Trademark Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.]

§ 104. Invention made abroad

(a) IN GENERAL.—In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States or a NAFTA country and serving in any other country in connection with operations by or on behalf of the United States or a NAFTA country, the person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States or a NAFTA country. To the extent that any information in a NAFTA country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

(b) DEFINITION.—As used in this section, the term "NAFTA country" has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act.

SECTION 4 OF THE RECORD RENTAL AMENDMENT OF 1985

EFFECTIVE DATE

SEC. 4. (a) * * *

* * * * * * *

[(c) The amendments made by this Act shall not apply to rentals, leasings, lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring after the date which is 13 years after the date of the enactment of this Act.]

TRADEMARK ACT OF 1946

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TITLE I—THE PRINCIPAL REGISTER

* * * * * * *

MARKS REGISTRABLE ON THE PRINCIPAL REGISTER

SEC. 2. No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) * * *

* * * * * * *

[(e) Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 4 hereof, or (3) is primarily merely a surname.]

(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 4, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, or (4) is primarily merely a surname.

(f) Except as expressly excluded in paragraphs (a), (b), (c), [and (d)] *(d), and (e)(3)* of this section, nothing herein shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. *Nothing in this section shall prevent the registration of a mark which,*

when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before the date of the enactment of the North American Free Trade Agreement Implementation Act.

* * * * * * *

TITLE II—THE SUPPLEMENTAL REGISTER

SEC. 23. (a) In addition to the principal register, the Commissioner shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trade-marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under subsections (a), (b), (c), [and (d)] *(d), and (e)(3)* of section 2 of this Act, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1 so far as they are applicable. *Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this Act, that is declared to be unregistrable under section 2(e)(3), if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before the date of the enactment of the North American Free Trade Agreement Implementation Act.*

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TITLE 17, UNITED STATES CODE

* * * * * * *

Chapter 1—Subject Matter and Scope of Copyright

* * * * * * *

§ 104A. Copyright in certain motion pictures

(a) RESTORATION OF COPYRIGHT.—Subject to subsections (b) and (c)—

(1) any motion picture that is first fixed or published in the territory of a NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act to

which Annex 1705.7 of the North American Free Trade Agreement applies, and

(2) any work included in such motion picture that is first fixed in or published with such motion picture.

that entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by section 401, 402, or 403 of this title, the absence of which has not been excused by the operation of section 405 of this title, as such sections were in effect during that period, shall have copyright protection under this title for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice.

(b) EFFECTIVE DATE OF PROTECTION.—The protection provided under subsection (a) shall become effective, with respect to any motion picture or work included in such motion picture meeting the criteria of that subsection, 1 year after the date on which the North American Free Trade Agreement enters into force with respect to, and the United States applies the Agreement to, the country in whose territory the motion picture was first fixed or published if, before the end of that 1-year period, the copyright owner in the motion picture or work files with the Copyright Office a statement of intent to have copyright protection restored under subsection (a). The Copyright Office shall publish in the Federal Register promptly after that effective date a list of motion pictures, and works included in such motion pictures, for which protection is provided under subsection (a).

(c) USE OF PREVIOUSLY OWNED COPIES.—A national or domiciliary of the United States who, before the date of the enactment of the North American Free Trade Agreement Implementation Act, made or acquired copies of a motion picture, or other work included in such motion picture, that is subject to protection under subsection (a), may sell or distribute such copies or continue to perform publicly such motion picture and other work without liability for such sale, distribution, or performance, for a period of 1 year after the date on which the list of motion pictures, and works included in such motion pictures, that are subject to protection under subsection (a) is published in the Federal Register under subsection (b).

* * * * * * *

SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * * * *

(e)*(1)* Notwithstanding any other provision of this Act, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States–Canada Free–Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for

such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.

(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15). The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of NAFTA.

(3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit—

(A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and

(B) shall cease to apply as provided for in paragraph 3 of such Appendix.

(4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if—

(A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);

(B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—

(i) the action proposed to be taken and the reasons therefor, and

(ii) the advice obtained under subparagraph (A);

(C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and (B) with respect to such action has expired; and

(D) the President has consulted with such committees regarding the proposed action during the period referred to in subparagraph (C).

(5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 212(m), in the case of a registered nurse, or the application requirement of section 212(n), in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition requirement of subsection (c), to the extent and in the

manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 212(m) and 212(n), and the Attorney General, with respect to subsection (c).

* * * * * * *

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

TRADE AGREEMENTS ACT OF 1979

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; PURPOSES.

(a) SHORT TITLE.—This Act may be cited as the "Trade Agreements Act of 1979".

(b) TABLE OF CONTENTS.—

TITLE I—COUNTERVAILING AND ANTIDUMPING DUTIES

* * * * * * *

TITLE IV—TECHNICAL BARRIERS TO TRADE (STANDARDS)

Subtitle A—Obligations of the United States

* * * * * * *

TITLE III—GOVERNMENT PROCUREMENT

SEC. 301. GENERAL AUTHORITY TO MODIFY DISCRIMINATORY PURCHASING REQUIREMENTS

(a) PRESIDENTIAL WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS.—[The President] *Subject to subsection (f) of this section, the President* may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality des-

ignated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) DESIGNATION OF ELIGIBLE COUNTRIES AND INSTRUMENTALITIES.—The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement *or the North American Free Trade Agreement,* and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

* * * * * * *

(e) PROCUREMENT PROCEDURES BY CERTAIN FEDERAL AGENCIES.—Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a–2 of the North American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.

(f) SMALL BUSINESS AND MINORITY PREFERENCES.—The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.

SEC. 302. AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.

(a) AUTHORITY TO BAR PROCUREMENT FROM NON-DESIGNATED COUNTRIES.—With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(1) shall prohibit the procurement, after the date on which any waiver under section 301(a) first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and (B) which [would otherwise be eligible products] *are products covered under the Agreement for procurement by the United States;* and

* * * * * * *

SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * * * *

(4) ELIGIBLE PRODUCTS.—

[(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.]

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality that is—

(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States; or

(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States.

* * * * * * *

TITLE IV—TECHNICAL BARRIERS TO TRADE (STANDARDS)

* * * * * * *

Subtitle B—Functions of Federal Agencies

SEC. 411. FUNCTIONS OF [SPECIAL] *TRADE* REPRESENTATIVE.

(a) IN GENERAL.The [Special] *Trade* Representative shall coordiante the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this title.

(b) NEGOTIATING FUNCTIONS.—The [Special] *Trade* Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standard-related activities. In carrying out this responsibility, the [Special] *Trade* Representative shall inform and consult with any Federal agency having expertise in the matter

(c) CROSS REFERENCE.—

* * * * * * *

SEC. 412. ESTABLISHMENT AND OPERATION OF TECHNICAL OFFICES.

(a) ESTABLISHMENT.—

(1) FOR NONAGRICULTURAL PRODUCTS.—The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) with respect to nonagricultural products.

(2) FOR AGRICULTURAL PRODUCTS.—The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) with respect to agricultural products.

(b) FUNCTIONS OF OFFICES.—The President shall prescribe for each technical office established under subsection (a) such func-

tions as the President deems necessary or appropriate to implement this title.

SEC. 413. REPRESENTATION OF UNITED STATES INTERESTS BEFORE INTERNATIONAL STANDARDS ORGANIZATIONS.

(a) OVERSIGHT AND CONSULTATION.—The Secretary concerned shall—

(1) inform, and consult and coordinate with, the [Special] *Trade* Representative with respect to international standards-related activities identified under paragraph (2);

* * * * * * *

SEC. 415 CONTRACTS AND GRANTS.

(a) IN GENERAL.—For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the [Special] *Trade* Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 413, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall be subject to such terms and conditions as the [Special] *Trade* Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) LIMITATIONS.—Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the [Special] *Trade* Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the [Special] *Trade* Representative or Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper and record that is pertinent to the funds received under such grant or contract.

SEC. 416. TECHNICAL ASSISTANCE.

The [Special] *Trade* Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this title.

SEC. 417. CONSULTATIONS WITH REPRESENTATIVES OF DOMESTIC INTERESTS.

In carrying out the functions for which responsible under this title, the [Special] *Trade* Representative or Secretary concerned shall solicit technical and policy advice from the committees, established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

Subtitle C—Administrative and Judicial Proceedings Regarding Standards-Related Activities

CHAPTER 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OR OBLIGATIONS

SEC. 421. RIGHTS OF ACTION UNDER THIS CHAPTER.

Except as provided under this chapter, the provisions of this subtitle do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

SEC. 422. REPRESENTATIONS.

Any—

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the [Special] *Trade* Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement:

may make a representation to the [Special] *Trade* Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the [Special] *Trade* Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

SEC. 423. ACTION AFTER RECEIPT OF REPRESENTATIONS.

(a) REVIEW.—Upon receipt of any representation made under section 422, the [Special] *Trade* Representative shall review the issues concerned in consultation with—

(1) the agency or person alleged to be engaging in violations under the Agreement;

(2) the member agencies of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872((A));

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 417.

(b) RESOLUTION.—The [Special] *Trade* Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

SEC. 424. PROCEDURE AFTER FINDING BY INTERNATIONAL FORUM.

(a) IN GENERAL.—If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) CROSS REFERENCE.—

For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

CHAPTER 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

SEC. 441. FINDINGS OF RECIPROCITY REQUIRED IN ADMINISTRATIVE PROCEEDINGS.

(a) IN GENERAL.—Except as provided under chapter 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in with the United States and is covered by the Agreement, unless the [Special] *Trade* Representative finds, and informs the agency concerned in writing, that—

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) EXEMPTIONS.—This section does not apply with respect to causes of action arising under—

(1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or

(2) statutes administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

* * * * * * *

Subtitle D—Definitions and Miscellaneous Provisions

SEC. 451. DEFINITIONS.

As used in this title—

(1) AGREEMENT.—The term "Agreement" means the Agreement on Technical Barriers to Trade approved under section 2(a) of this Act.

* * * * * * *

[(12) SPECIAL REPRESENTATIVE.—The term "Special Representative" means the Special Representative for Trade Negotiations.]

(12) TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

* * * * * * *

SEC. 453. REPORTS TO CONGRESS ON OPERATION OF AGREEMENT.

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period, the [Special] *Trade* Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

SEC. 454. EFFECTIVE DATE.

This title shall take effect on January 1, 1980, of the Agreement enters into force with respect to the United States by that date.

Subtitle E—Standards and Measures Under the North American Free Trade Agreement

CHAPTER 1—SANITARY AND PHYTOSANITARY MEASURES

SEC. 461. GENERAL.

Nothing in this chapter may be construed—

(1) to prohibit a Federal agency or State agency from engaging in activity related to sanitary or phytosanitary measures to protect human, animal, or plant life or health; or

(2) to limit the authority of a Federal agency or State agency to determine the level of protection of human, animal, or plant life or health the agency considers appropriate.

SEC. 462. INQUIRY POINT.

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(1) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure proposed, adopted, or maintained by a Federal or State agency;

(2) the procedures of a Federal or State agency for risk assessment, and factors the agency considers in conducting the assess-

ment and in establishing the levels of protection that the agency considers appropriate;

(3) the membership and participation of the Federal Government and State governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements; and

(4) the location of notices of the type required under article 719 of the NAFTA, or where the information contained in such notices can be obtained.

SEC. 463. CHAPTER DEFINITIONS.

Notwithstanding section 451, for purposes of this chapter—

(1) ANIMAL.—The term "animal" includes fish, bees, and wild fauna.

(2) APPROVAL PROCEDURE.—The term "approval procedure" means any registration, notification, or other mandatory administrative procedure for—

(A) approving the use of an additive for a stated purpose or under stated conditions, or

(B) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage, or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage, or feedstuff containing the additive or contaminant.

(3) CONTAMINANT.—The term "contaminant" includes pesticide and veterinary drug residues and extraneous matter.

(4) CONTROL OR INSPECTION PROCEDURE.—The term "control or inspection procedure" means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing, or use of a good, but does not mean an approval procedure.

(5) PLANT.—The term "plant" includes wild flora.

(6) RISK ASSESSMENT.—The term "risk assessment" means an evaluation of—

(A) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(B) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff.

(7) SANITARY OR PHYTOSANITARY MEASURE.—

(A) IN GENERAL.—The term "sanitary or phytosanitary measure" means a measure to—

(i) protect animal or plant life or health in the United States from risks arising from the introduction, establishment, or spread of a pest or disease;

(ii) protect human or animal life or health in the United States from risks arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food, beverage, or feedstuff;

(iii) protect human life or health in the United States from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or

(iv) prevent or limit other damage in the United States arising from the introduction, establishment, or spread of a pest.

(B) FORM.—The form of a sanitary or phytosanitary measure includes—

(i) end product criteria;

(ii) a product-related processing or production method;

(iii) a testing, inspection, certification, or approval procedure;

(iv) a relevant statistical method;

(v) a sampling procedure;

(vi) a method of risk assessment;

(vii) a packaging and labeling requirement directly related to food safety; and

(viii) a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation.

CHAPTER 2—STANDARDS-RELATED MEASURES

SEC. 471. GENERAL.

(a) NO BAR TO ENGAGING IN STANDARDS ACTIVITY.—Nothing in this chapter shall be construed—

(1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment or consumers; or

(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment or consumers.

(b) EXCLUSION.—This chapter does not apply to—

(1) technical specifications prepared by a Federal agency for production or consumption requirements of the agency; or

(2) sanitary or phytosanitary measures under chapter 1.

SEC. 472. INQUIRY POINT.

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(1) the membership and participation of the Federal Government, State governments, and relevant nongovernmental bodies in the United States in international and regional standardizing bodies and conformity assessment systems, and in bilateral

and multilateral arrangements regarding standards-related measures, and the provisions of those systems and arrangements;

(2) the location of notices of the type required under article 909 of the NAFTA, or where the information contained in such notice can be obtained; and

(3) the Federal agency procedures for assessment of risk, and factors the agency considers in conducting the assessment and establishing the levels of protection that the agency considers appropriate.

SEC. 473. CHAPTER DEFINITIONS.

Notwithstanding section 451, for purposes of this chapter—

(1) APPROVAL PROCEDURE.—The term "approval procedure" means any registration, notification, or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions.

(2) CONFORMITY ASSESSMENT PROCEDURE.—The term "conformity assessment procedure" means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure.

(3) OBJECTIVE.—The term "objective" includes—

(A) safety,

(B) protection of human, animal, or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and

(C) sustainable development,

but does not include the protection of domestic production.

(4) SERVICE.—The term "service" means a land transportation service or a telecommunications service.

(5) STANDARD.—The term "standard" means—

(A) characteristics for a good or a service,

(B) characteristics, rules, or guidelines for—

(i) processes or production methods relating to such good, or

(ii) operating methods relating to such service, and

(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—

(i) a good or its related process or production methods, or

(ii) a service or its related operating methods,

for common and repeated use, including explanatory and other related provisions set out in a document approved by a standardizing body, with which compliance is not mandatory.

(6) STANDARDS-RELATED MEASURE.—The term "standards-related measure" means a standard, technical regulation, or conformity assessment procedure.

(7) TECHNICAL REGULATION.—The term "technical regulation" means—

(A) characteristics or their related processes and production methods for a good,

(B) characteristics for a service or its related operating methods, or

(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—

(i) a good or its related process or production method, or

(ii) a service or its related operating method,

set out in a document, including applicable administrative, explanatory, and other related provisions, with which compliance is mandatory.

(8) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast, or other electromagnetic distribution of radio or television programming to the public generally.

CHAPTER 3—SUBTITLE DEFINITIONS

SEC. 481. DEFINITIONS.

Notwithstanding section 451, for purposes of this subtitle—

(1) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(2) STATE.—The term "State" means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

* * * * * * *

SECTION 302 OF THE FEDERAL SEED ACT

SEC. 302. (a) * * *

* * * * * * *

(e) The provisions of this title requiring certain seeds to be stained shall not apply—

(1) to alfalfa or clover seed originating in Canada *or Mexico*, or

* * * * * * *

ACT OF AUGUST 30, 1890

Chapter 839.—An act providing for an inspection of meats for exportation, prohibiting the importation of adulterated articles of food or drink, and authorizing the President to make proclamation in certain cases, and for other purposes.

* * * * * * *

SEC. 6. The importation of cattle, sheep, and other ruminants, and swine, which are diseased or infected with any disease, or which shall have been exposed to such infection within sixty days next before their exportation, is prohibited[: *Provided*, That the Secretary of Agriculture, within his discretion and under such regulations as he may prescribe, is authorized to permit the admission from Mexico into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom, and the admission from the British Virgin Islands into the Virgin Islands

of the United States, for slaughter only, of cattle which have been infested with or exposed to ticks upon being freed therefrom.] , *except that the Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may (1) permit the importation of cattle, sheep, or other ruminants, and swine, from Canada or Mexico, and (2) permit the importation from the British Virgin Islands into the Virgin Islands of the United States, for slaughter only, of cattle that have been infested with or exposed to ticks on being freed from the ticks.* Any person who knowingly violates any provision of this section or sections 7 through 10 of this Act or any regulation prescribed by the Secretary of Agriculture under any such section shall be guilty of a misdemeanor and shall, on conviction, be punished by a fine not exceeding $5,000 by imprisonment not exceeding one year, or both. Any person who violates any such provision or any such regulation may be assessed a civil penalty by the Secretary of Agriculture not exceeding $1,000. The Secretary may issue an order assessing such civil penalty only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable under chapter 158 of title 28, United States Code. The validity of such order may not be reviewed in an action to collect such civil penalty.

* * * * * * *

SEC. 10. INSPECTION OF ANIMALS.

[SEC. 10. That the Secretary of Agriculture shall]—*(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of Agriculture shall* cause careful inspection to be made by a suitable officer of all imported animals described in this act, to ascertain whether such animals are infected with contagious diseases or have been exposed to infection so as to be dangerous to other animals, which shall then either be placed in quarantine or dealt with according to the regulations of the Secretary of Agriculture; and all food, litter, manure, clothing, utensils, and other appliances that have been so related to such animals on board ship as to be judged liable to convey infection shall be dealt with according to the regulations of the Secretary of Agriculture; and the Secretary of Agriculture may cause inspection to be made of all animals described in this act intended for exportation, and provide for the disinfection of all vessels engaged in the transportation thereof, and of all barges or other vessels used in the conveyance of such animals intended for export to the ocean steamer or other vessels, and of all attendants and their clothing, and of all head-ropes and other appliances used in such exportation, by such orders and regulations as he may prescribe; and if, upon such inspection, any such animals shall be adjudged, under the regulations of the Secretary of Agriculture, to be infected or to have been exposed to infection so as to be dangerous to other animals, they shall not be allowed to be placed upon any vessel for exportation; the expense of all the inspection and disinfection provided for in this section to be borne by the owners of the vessels on which such animals are exported.

(b) EXCEPTION.—The Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may waive any provision of subsection (a) in the case of shipments between the United States and Canada or Mexico.

SECTION 1 OF THE ACT OF AUGUST 31, 1922

(COMMONLY REFERRED TO AS THE HONEYBEE ACT)

CHAPTER. 301.—An Act To regulate foreign commerce in the importation into the United States of the adult honeybee (Apis mellifica).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

(a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germ plasma of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States—

(1) by the United States Department of Agriculture for experimental or scientific purposes [, or];

(2) from countries determined by the Secretary of Agriculture—

(A) to be free of disease or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

(B) to have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful disease or parasites, or undesirable species or subspecies, of honeybees exist[.] ; *or*

(3) from Canada or Mexico, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees.

(b) Honeybee semen may be imported into the United States only from *(1)* countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honeybees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen, *or (2) Canada or Mexico, if the Secretary of Agriculture determines that the region of Canada or Mexico from which the imports originate is, and is likely to remain, free of undesirable species or subspecies of honeybees:*

* * * * * * *

SECTION 17 OF THE POULTRY PRODUCTS INSPECTION ACT

IMPORTS

SEC. 17. (a) * * *

* * * * * * *

(d)(1) Notwithstanding any other provision of law, *except as provided in paragraph (2),* all poultry, or parts or products thereof, capable of use as human food offered for importation into the United States shall—

(A) be subject to the same inspection, sanitary, quality, species verification, and residue standards applied to products produced in the United States; and

(B) have been processed in facilities and under conditions that are the same as those under which similar products are processed in the United States.

(2)(A) Notwithstanding any other provision of law, all poultry, or parts or products of poultry, capable of use as human food offered for importation into the United States from Canada and Mexico shall—

(i) comply with paragraph (1); or

(ii)(I) be subject to inspection, sanitary, quality, species verification, and residue standards that are equivalent to United States standards; and

(II) have been processed in facilities and under conditions that meet standards that are equivalent to United States standards.

(B) The Secretary may treat as equivalent to a United States standard a standard of Canada or Mexico described in subparagraph (A)(ii) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the standard of the exporting country achieves the level of protection that the Secretary considers appropriate.

(C) The Secretary may—

(i) determine, on a scientific basis, that the standard of the exporting country does not achieve the level of protection that the Secretary considers appropriate; and

(ii) provide the basis for the determination in writing to the exporting country on request.

[(2)] *(3)* Any such imported poultry article that does not meet such standards shall not be permitted entry into the United States.

[(3)] *(4)* The Secretary shall enforce this subsection through—

(A) random inspections for such species verification and for residues; and

(B) random sampling and testing of internal organs and fat of carcasses for residues at the point of slaughter by the exporting country, in accordance with methods approved by the Secretary.

SECTION 20 OF THE FEDERAL MEAT INSPECTION ACT

SEC. 20. (a) * * *

* * * * * * *

(e) Not later than March 1 of each year the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate a comprehensive and detailed written report with respect to the administration of this section during the immediately preceding calendar year. Such report shall include, but shall [not be limited to—] *not be limited to the following:*

(1)(A) Subject to subparagraphs (B) and (C), a certification by the Secretary that foreign plants in Canada and Mexico that export carcasses or meat or meat products referred to in subsection (a) have complied with paragraph (2) or with require-

ments that are equivalent to United States requirements with regard to all inspection and building construction standards, and all other provisions of this Act and regulations issued under this Act.

(B) Subject to subparagraph (C), the Secretary may treat as equivalent to a United States requirement a requirement described in subparagraph (A) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the requirement or standard of the exporting country achieves the level of protection that the Secretary considers appropriate.

(C) The Secretary may—

(i) determine, on a scientific basis, that a requirement of an exporting country does not achieve the level of protection that the Secretary considers appropriate; and

(ii) provide the basis for the determination to the exporting country in writing on request.

(2) A certification by the Secretary that, except as provided in paragraph (1), foreign plants that export carcasses or meat or meat products referred to in subsection (a) have complied with requirements that are at least equal to all inspection and building construction standards and all other provisions of this Act and regulations issued under this Act.

[(1) a certification by the Secretary that foreign plants exporting carcasses or meat or meat products referred to in subsection (a) of this section have complied with requirements at least equal to all the inspection, building construction standards, and all other provisions of this Act and regulations issued thereunder;]

[(2) the] *(3) The* names and locations of plants authorized or permitted to have imported into the United States therefrom carcasses or meat or meat products referred to in subsection (a) of this section[;].

[(3) the] *(4) The* number of inspectors employed by the Department of Agriculture in the calendar year concerned who were assigned to inspect plants referred to in paragraph (e)(2) hereof and the frequency with which each such plant was inspected by such inspectors[;].

[(4) the] *(5) The* number of inspectors licensed by each country from which any imports subject to the provisions of this section were imported who were assigned, during the calendar year concerned, to inspect such imports and the facilities in which such imports were handled and the frequency and effectiveness of such inspections[;].

[(5) the] *(6) The* total volume of carcasses or meat or meat products referred to in subsection (a) of this section which was imported into the United States during the calendar year concerned from each country, including a separate itemization of the volume of each major category of such imports from each country during such year, and a detailed report of rejections of plants and products because of failure to meet appropriate standards prescribed by this Act[; and].

[(6) the] *(7) The* name of each foreign country that applies standards for the importation of meat articles from the United States that are described in subsection (h)(2).

* * * * * * *

SECTION 503 OF THE MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

DETERMINATION OF AVERAGE FUEL ECONOMY

SEC. 503. (a) * * *
(b)(1) * * *
(2) For purposes of this subsection:
(A) * * *

* * * * * * *

(E) [An] *Except as provided in subparagraph (G), an* automobile shall be considered domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year. The EPA Administrator may prescribe rules for purposes of carrying out [this subparagraph] *this subparagraph and subparagraph (G).*

* * * * * * *

(G)(i) In accordance with the schedule set out in clause (ii), an automobile shall be considered domestically manufactured in a model year if at least 75 percent of the cost to the manufacturer of the automobile is attributable to value added in the United States, Canada, or Mexico, unless the assembly of the automobile is completed in Canada or Mexico and the automobile is not imported into the United States prior to the expiration of 30 days following the end of that model year.

(ii) Clause (i) shall apply to all automobiles manufactured by a manufacturer and sold in the United States, wherever assembled, in accordance with the following schedule:

(I) With respect to a manufacturer that initiated the assembly of automobiles in Mexico before model year 1992, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election.

(II) With respect to a manufacturer initiating the assembly of automobiles in Mexico after model year 1991, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994, or the model year commencing after the date that the manufacturer initiates the assembly of automobiles in Mexico, whichever is later.

(III) With respect to a manufacturer not described by subclause (I) or (II) assembling automobiles in the United

States or Canada but not in Mexico, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election, except that if such manufacturer initiates the assembly of automobiles in Mexico before making such election, this subclause shall not apply and the manufacturer shall be subject to clause (II).

(IV) With respect to a manufacturer not assembling automobiles in the United States, Canada, or Mexico, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994.

(V) With respect to a manufacturer authorized to make an election under subclause (I) or (III) which has not made that election within the specified period, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 2004.

(iii) The Secretary shall prescribe reasonable procedures for elections under this subparagraph, and the EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.

* * * * * * *

SECTION 401 OF THE RURAL ELECTRIFICATION ACT OF 1938

SEC. 401. The Act entitled "An Act to provide for rural electrification, and for other purposes", approved May 20, 1936 (49 Stat. 1363), is hereby amended as follows: (a) By inserting in subsection (a) of section 3 thereof immediately following the date "June 30, 1937" the phrase "and $100,000,000 for the fiscal year ending June 30, 1939" and (b) by striking out the date "June 30, 1937" appearing at the end of subsection (e) of such section 3 and inserting in lieu thereof the date "June 30, 1939".

In making loans pursuant to this title and pursuant to the Rural Electrification Act of 1936, the Administrator of the Rural Electrification Administration shall require that, to the extent practicable and the cost of which is not unreasonable, the borrower agree to use in connection with the expenditure of such funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States, *Mexico, or Canada,* and only such manufactured articles, materials, and supplies as have been manufactured in the United States, *Mexico, or Canada* substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, *Mexico, or Canada.*

TITLE 28, UNITED STATES CODE

* * * * * * *

PART IV—JURISDICTION AND VENUE

* * * * * * *

CHAPTER 95—COURT OF INTERNATIONAL TRADE

* * * * * * *

Sec.
1581. Civil actions against the United States and agencies and officers thereof.
1582. Civil actions commenced by the United States.
1583. Counterclaims, cross-claims, and third-party actions.
[1584. Civil actions under the United States-Canada Free-Trade Agreement.]
1584. *Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.*

§ 1581. Civil actions against the United States and agencies and officers thereof

(a) * * *

* * * * * * *

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act; **[**and**]**

(2) any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930**[**.**]**; *and*

(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

* * * * * * *

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of *the North American Free Trade Agreement or* the United States-Canada Free-Trade Agreement, and section 516A(g) of the Tariff Act of 1930.

* * * * * * *

§ 1582. Civil actions commenced by the United States

The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

(1) to recover a civil penalty under section 592, *593A,* 641(b)(6), 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

* * * * * * *

[§ 1584. Civil actions under the United States-Canada Free-Trade Agreement]

§ 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement

The United States Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section **[**777(d)**]** *777(f)* of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking.

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PART VI—PARTICULAR PROCEEDINGS

* * * * * * *

CHAPTER 151—DECLARATORY JUDGMENTS

* * * * * * *

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under action 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of **[**Canadian merchandise**]** *merchandise of a free trade area country (as defined in section 516(f)(1) of the Tariff Act of 1930),* as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as much.

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CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

* * * * * * *

§ 2631. Persons entitled to commence a civil action

(a) * * *

* * * * * * *

(g)(1)* * *

* * * * * * *

(3) A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.

* * * * * * *

§ 2635. Filing of official documents

[(a)(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

[(A) the consumption or other entry and the entry summary;

[(B) the commercial invoice;

[(C) the special customs invoice;

[(D) a copy of the protest or petition;

[(E) a copy of the denial, in whole or in part, of the protest or petition;

[(F) the importer's exhibits;

[(G) the official and other representative samples;

[(H) any official laboratory reports; and

[(I) a copy of any board relating to the entry.

[(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.]

(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any document, paper, information or data relating to the entry of merchandise and the administrative determination that is the subject of the protest or petition.

* * * * * * *

§ 2636. Time for commencement of action

(a) * * *

* * * * * * *

(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.

[(h)]*(i)* A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsection (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

* * * * * * *

§ 2640. Scope and standard of review

(a) * * *

* * * * * * *

(d) In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.

[(d)] *(e)* In any civil action not specified in the section, the Court of International Trade shall review the matter as provided in section 706 of title 5.

* * * * * * *

§ 2642. Analysis of imported merchandise

The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States *or laboratories accredited by the Customs Services under section 499(b) of the Tariff Act of 1930.*

* * * * * * *

CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

* * * * * * *

§ 2643. Relief

(a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(5) In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of [Canadian merchandise,] *merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930),* as determined by the administering authority, the Court of International Trade may not order declaratory relief.

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INTERNAL REVENUE CODE

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Subtitle C—Employment Taxes

* * * * * * *

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

* * * * * * *

SEC. 3304. APPROVAL OF STATE LAWS.

(a) REQUIREMENTS.—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) * * *

* * * * * * *

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(A) * * *

* * * * * * *

(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act; [and]

(E) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; *and*

(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t));

* * * * * * *

SEC. 3306. DEFINITIONS.

(a) * * *

* * * * * * *

(f) UNEMPLOYMENT FUND.—For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(1) * * *

* * * * * * *

(3) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act; [and]

(4) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor[.]; *and*

(5) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).

* * * * * * *

(t) SELF-EMPLOYMENT ASSISTANCE PROGRAM.—For the purposes of this chapter, the term "self-employment assistance program" means a program under which—

(1) individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(2) the allowance payable to individuals pursuant to paragraph (1) is a payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that—

(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

(C) such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation,

as long as such individuals meet the requirements applicable under this subsection;

(3) individuals may receive the allowance described in paragraph (1) if such individuals—

(A) are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation and

(C) are participating in self-employment assistance activities which—

(i) include entrepreneurial training, business counseling, and technical assistance; and

(ii) are approved by the State agency; and

(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time;

(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.

* * * * * * *

Subtitle F—Procedure and Administration

* * * * * * *

CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

Subchapter B—Miscellaneous Provisions

* * * * * * *

SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

* * * * * * *

(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) * * *

* * * * * * *

(14) DISCLOSURE OF RETURN INFORMATION TO UNITED STATES CUSTOMS SERVICE.—The Secretary may, upon written request from the Commissioner of the United States Customs Service, disclose to officers and employees of the Department of the Treasury such return information with respect to taxes imposed by chapters 1 and 6 as the Secretary may prescribe by regulations, solely for the purpose of, and only to the extent necessary in—

(A) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 (19 U.S.C. 1509), or

(B) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

* * * * * * *

(p) PROCEDURE AND RECORDKEEPING.—

(1) * * *

* * * * * * *

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4), (7)(A)(ii), or (8), (k)(1), (2), or (6), (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), [or (13)] *(13), or (14),* (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

* * * * * * *

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(6), (i)(1), (2), (3), (5), or (8), (j)(1) or (2), (l)(1), (2), (3), (5), (10), (11), [or (13)] *(13), or (14),* or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (8) or (l)(6), (7), (8), (9), or (12) shall, as a condition for receiving returns or return information—

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason or such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission or the General Accounting Office for ensuring the confidentiality of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), (9), return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,

(ii) in the case of an agency described in subsections (h)(2), (h)(6), (i)(1), (2), (3), (5), or (8), (j)(1) or (2), (l)(1), (2), (3), (5), (10), (11), (12), [or (13)] *(13), or (14),* or (o)(1), or the General Accounting Office, either—

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise make such returns or return information undisclosable, or

(III) to the extent not so returned or make undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information, and

(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing the notification for which the information was obtained, so as to make such information undisclosable;

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency body, or commission or the General Accounting Office until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under paragraph (2), (4), (6), or (7) of subsection (m) and which discloses any such mailing address to any agent or which receives any information under subsection (l)(12)(B) and which discloses any such information to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).

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CHAPTER 64—COLLECTION

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Subchapter A—General Provisions

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SEC. 6302. MODE OR TIME OF COLLECTION.

(a) * * *

* * * * * * *

(h) USE OF ELECTRONIC FUND TRANSFER SYSTEM FOR COLLECTION OF CERTAIN TAXES.—

(1) ESTABLISHMENT OF SYSTEM.—

(A) IN GENERAL.—The Secretary shall prescribe such regulations as may be necessary for the development and implementation of an electronic fund transfer system which is required to be used for the collection of depository taxes. Such system shall be designed in such manner as may be necessary to ensure that such taxes are credited to the general account of the Treasury on the date on which such taxes would otherwise have been required to be deposited under the Federal tax deposit system.

(B) EXEMPTIONS.—The regulations prescribed under subparagraph (A) may contain such exemptions as the Secretary may deem appropriate.

(2) PHASE-IN REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the regulations referred to in paragraph (1)—

(i) shall contain appropriate procedures to assure that an orderly conversion from the Federal tax deposit system to the electronic fund transfer system is accomplished, and

(ii) may provide for a phase-in of such electronic fund transfer system by classes of taxpayers based on the aggregate undeposited taxes of such taxpayers at the close of specified periods and any other factors the Secretary may deem appropriate.

(B) PHASE-IN REQUIREMENTS.—The phase-in of the electronic fund transfer system shall be designed in such manner as may be necessary to ensure that—

(i) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total depository taxes imposed by chapters 21, 22, and 24 shall be collected by means of electronic fund transfer, and

(ii) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total other depository taxes shall be collected by means of electronic fund transfer.

(C) APPLICABLE REQUIRED PERCENTAGE.—

(i) In the case of the depository taxes imposed by chapters 21, 22, and 24, the applicable required percentage is—

(I) 3 percent for fiscal year 1994,

(II) 16.9 percent for fiscal year 1995,

(III) 20.1 percent for fiscal year 1996,

(IV) 58.3 percent for fiscal years 1997 and 1998, and

(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.

(ii) In the case of other depository taxes, the applicable required percentage is—

(I) 3 percent for fiscal year 1994,

(II) 20 percent for fiscal year 1995,

(III) 30 percent for fiscal year 1996,

(IV) 60 percent for fiscal years 1997 and 1998, and

(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.

(3) DEFINITIONS.—For purposes of this subsection—

(A) DEPOSITORY TAX.—The term "depository tax" means any tax if the Secretary is authorized to require deposits of such tax.

(B) ELECTRONIC FUND TRANSFER.—The term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution or other financial intermediary to debit or credit an account.

(4) COORDINATION WITH OTHER ELECTRONIC FUND TRANSFER REQUIREMENTS.—

(A) COORDINATION WITH CERTAIN EXCISE TAXES.—In determining whether the requirements of subparagraph (B) of paragraph (2) are met, taxes required to be paid by electronic fund transfer under sections 5061(e) and 5703(b) shall be disregarded.

(B) ADDITIONAL REQUIREMENT.—Under regulations, any tax required to be paid by electronic fund transfer under section 5061(e) or 5703(b) shall be paid in such a manner as to ensure that the requirements of the second sentence of paragraph (1)(A) of this subsection are satisfied.

[(h)] *(i)* CROSS REFERENCES.—

For treatment of earned income advance amounts as payment of withholding and FICA taxes, see section 3507(d).

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

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SEC. 9505. HARBOR MAINTENANCE TRUST FUND.

(a) * * *

* * * * * * *

(c) EXPENDITURES FROM HARBOR MAINTENANCE TRUST FUND.—Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriation Acts, for making expenditures—

(1) * * *

* * * * * * *

[(3) for the payment of all expenses of administration incurred—

[(A) by the Department of The Treasury in administering subchapter A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year, and

[(B) for periods during which no fee applies under paragraph (9) or (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985.]

(3) for the payment of all expenses of administration incurred by the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce related to the administration of subchapter A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year.

SECTION 303 OF THE SOCIAL SECURITY ACT

PROVISIONS OF STATE LAWS

SEC. 303. (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for—

(1) * * *

* * * * * * *

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act: *Provided,* That an mount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further,* That the amounts specified by section 903(c)(2) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: *Provided further,* That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: *Provided further,* That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g): *Provided further,* That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor [; and]

: Provided further, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and

* * * * * * *

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

* * * * * * *

TITLE II—CARIBBEAN BASIN INITIATIVE

SEC. 201. SHORT TITLE.

This title may be cited as the "Caribbean Basin Economic Recovery Act".

Subtitle A—Duty-Free Treatment

* * * * * * *

SEC. 219. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE.

(a) ESTABLISHMENT.—The Commissioner of Customs, after consultation with appropriate officials in the State of Texas, is authorized and directed to make grants to an institution (or a consortium of such institutions) to assist such institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (hereafter in this section referred to as the "Center". The Commissioner of Customs shall make the first grant not later than December 1, 1994, and the Center shall be established not later than February 1, 1995.

(b) SCOPE OF THE CENTER.—The Center shall be a year-round program operated by an institution located in the State of Texas (or a consortium of such institutions), the purpose of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine—

(1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere,

(2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and

(3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

(c) CONSULTATION; SELECTION CRITERIA.—The Commissioner of Customs shall consult with appropriate officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. In selecting the appropriate institution, the Commissioner of Customs shall give consideration to—

(1) the institution's ability to carry out the programs and activities described in this section; and

(2) any resources the institution can provide the Center in addition to Federal funds provided under this program.

(d) PROGRAMS AND ACTIVITIES.—The Center shall conduct the following activities:

(1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere, including the impact of the NAFTA on individual economies and the desirability and feasibility of possible accessions to the NAFTA by such countries.

(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population.

(3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries.

(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries.

(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the center.

(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center at the University of Miami at Coral Gables.

(e) DEFINITIONS.—For purposes of this section—

(a) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(2) WESTERN HEMISPHERE COUNTRIES.—The terms "Western Hemisphere countries", "countries in the Western Hemisphere", and "Western Hemisphere" means Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by section 212), the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(f) FEES FOR SEMINARS AND PUBLICATIONS.—Notwithstanding any other provision of law, a grant made under this section may provide that the Center may charge a reasonable fee for attendance at seminars and conferences and for copies of publications, studies, reports, and other documents the Center publishes. The Center may waive such fees in any case in which it determines imposing a fee would impose a financial hardship and the purposes of the Center would be served by granting such a waiver.

(g) DURATION OF GRANT.—The Commissioner of Customs is directed to make grants to any institution or institutions selected as the Center for fiscal years 1994, 1995, 1996, and 1997.

(h) REPORT.—The Commissioner of Customs shall, no later than July 1, 1994, and annually thereafter for years for which grants are made, submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The first report shall include—

(1) a statement identifying the institution or institutions selected as the Center,

(2) the reasons for selecting the institution or institutions as the Center, and

(3) the plan of such institution or institutions for operating the Center.

Each subsequent report shall include information with respect to the operations of the Center, the collaboration of the Center with, and dissemination of information to, Government policymakers and the business community with respect to the study of Western Hemispheric trade by the Center, and the plan and efforts of the Center to continue operations after grants under this section have expired.

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REVISED STATUTES OF THE UNITED STATES

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TITLE XXXIV—COLLECTION OF DUTIES UPON IMPORTS

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CHAPTER FOUR—ENTRY OF MERCHANDISE

* * * * * * *

[SEC. 2792. Vessels used exclusively as ferry-boats carrying passengers, baggage, and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests, but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law.

[Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from entrance and clearance fees and tonnage taxes while such service triweekly or oftener is maintained.]

SEC. 2793. [Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States,] *Documented vessels with a coastwise, Great Lakes endorsement,* departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees or tonnage tax, as if from or to foreign ports[; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of Commerce may prescribe, notwithstanding any other provisions of law: *Provided,* That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual

consent, or transact any other business save that of taking on bunker fuel].

* * * * * * *

CHAPTER ELEVEN—PROVISIONS APPLYING TO COMMERCE WITH CONTIGUOUS COUNTRIES

* * * * * * *

[SEC. 3111. If any vessel enrolled or licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States shall touch at any port in the adjacent British provinces, and the master of such vessel shall purchase any merchandise for the use of the vessel, the master of the vessel shall report the same, with cost and quantity thereof, to an officer of the customs at the first port in the United States at which he shall next arrive, designating them as "sea-stores"; and in the oath to be taken by such master of such vessel, on making such report, he shall declare that the articles so specified or designated "sea-stores" are truly intended for the use exclusively of the vessel, and are not intended for sale, transfer, or private use. If any greater quantity of dutiable articles shall be found on board such vessel than are specified in such report or entry of such articles, or any part thereof shall be landed without a permit from an officer of the customs, such articles, together with the vessel, her apparel, tackle, and furniture, shall be forfeited.]

* * * * * * *

[SEC. 3118. The master of any vessel so enrolled or licensed shall, before departing from a port in one collection-district to a place in another collection-district, where there is no custom-house, file his manifest, and obtain a clearance in the same manner, and make oath to the manifest, which manifest and clearance shall be delivered to the proper officer of customs at the port at which the vessel next arrives after leaving the place of destination specified in the clearance.

[SEC. 3119. Nothing contained in the three preceding sections shall exempt masters of vessels from reporting, as now required by law, any merchandise destined for any foreign port. No permit shall be required for the unloading of cargo brought from an American port.]

* * * * * * *

[SEC. 3122. The master of any vessel so enrolled or licensed, destined with a cargo from a place in the United States, at which there may be no custom-house, to a port where there may be a custom-house, shall, within twenty-four hours after arrival at the port of destination, deliver to the proper officer of the customs a manifest, subscribed by him, setting forth the cargo laden at the place of departure, or laden or unladen at any intermediate port, or place, to the truth or which manifest he shall make oath before such officer. If the vessel, however, have no cargo, the master shall not be required to deliver such manifest.]

* * * * * * *

[SEC. 3124. The manifests, certificates of clearance, and oaths, provided for by the eight preceding sections, shall be in such form,

and prepared, filled up, and executed in such manner as the Secretary of the Treasury may from time to time prescribe.

[SEC. 3125. If the master of any enrolled or licensed vessel shall neglect or fail to comply with any of the provisions or requirements of the nine preceding sections, such master shall forfeit and pay to the United States the sum of twenty dollars for each and every failure or neglect, and for which sum the vessel shall be liable, and may be summarily proceeded against, by way of libel, in any district court of the United States.]

* * * * * * *

SEC. 3126. [Any vessel, on being duly registered in pursuance of the laws of the United States,] *Any United States documented vessel with a registry or coastwise endorsement, or both* may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers and their baggage, and letters, and mails. [All such vessels shall be furnished by the appropriate customs officers of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages; by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed.]

SEC. 3127. Any foreign merchandise taken in at one port of the United States to be conveyed [in registered vessels] *a United States documented vessel with a registry or coastwise endorsement, or both,* to any other port within the same, either under the provisions relating to warehouses, or under the laws regulating the transportation coastwise of merchandise entitled to drawback, as well as any merchandise not entitled to drawback, but on which the import duties chargeable by law shall have been duly paid, shall not become subject to any import duty by reason of the vessel in which they may arrive having touched at a foreign port during the voyage.

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TITLE 46—SHIPPING

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TITLE XLVIII—REGULATION OF COMMERCE AND NAVIGATION

Chapter One—Registry and Recording

* * * * * * *

SEC. 4136. [The Secretary of Commerce may issue a register or enrollment] *The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement* for any vessel wrecked on the coasts of the United States or her possessions or adjacent waters, when purchased by a citizen or citizens of the United States and thereupon repaired in a shipyard in the United States or her possessions, if it shall be proved to the satisfaction of the [Secretary of Commerce] *Secretary of Transportation,* if he deems it necessary , through a board of three appraisers appointed by him, that the said repairs put upon such vessels are equal to three times the appraised salved value of the vessel: *Provided,* That the expense of the appraisal herein provided for shall be borne by the owner of the vessel: *Provided further,* That if any of the material matters of fact sworn to or represented by the owner, or at his instance, to obtain the register of any vessel are not true, there shall be a forfeiture to the United States of the vessel in respect to which the oath shall have been made, together with tackel, apparel, and furniture thereof.

* * * * * * *

Chapter Two—Clearance and Entry

* * * * * * *

[SEC. 4197. The master or person having the charge or command of any vessel bound to a foreign port shall deliver to the collector of the district from which such vessel is about to depart a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo, but without specifying the particulars thereof in the clearance, unless required by the master or other person having the charge or command of such vessel so to do. In any vessel bound to a foreign port (other than a licensed yacht or an undocumented American pleasure vessel not engaged in any trade nor in any way violating the customs or navigation laws of the United States) departs from any port or place in the United States without a clearance, or if the master delivers a false manifest, or does not answer truly the questions demanded of him, or, having received a clearance adds to the cargo of such vessel without having mentioned in the report outwards the intention to do so, or if the departure of the vessel is delayed beyond the second day after obtaining clearance without reporting the delay to the collector, the master or other person having the charge or command of such vessel shall be liable to a penalty of not more than $1,000 nor less the $500, or if the cargo consists in any part of narcotic drugs, or any spirits, wines, or other alcoholic liquors (sea stores excepted), a penalty of not more than $5,000 nor less than $1,000 for each offense, and the vessel shall be detained in any port of the United States until the said penalty is paid or secured: *Provided,* That in order that the commerce of the United States may move with expedition and without undue delay, the Secretary of Commerce is hereby authorized to make regulations permitting the master of any vessel taking on cargo for a foreign port or for a port in noncontiguous territory belonging to the United States to file a manifest as hereinbefore provided, and

if the manifest be not a complete manifest and it so appears upon such manifest, the collector of customs may grant clearance to the vessel in case of an incomplete manifest, taking from the owner of the vessel, who may act in the premises by a duly authorized attorney in fact, a bond with security approved by the collector of customs in the penal sum of $1,000, conditioned that the master or someone for him will file a completed outward manifest not later than the fourth business day after the clearance of the vessel. In the event that the said complete outward manifest be not filed as required by the provisions of this section and the regulations made by the Secretary of Commerce in pursuance hereof, then a penalty of $50 for each day's delinquency beyond the allowed period of four days for filing the completed manifest shall be exacted, and if the completed manifest be not filed within the three days following the four-day period, then for each succeeding day of delinquency a penalty of $100 shall be exacted. Suit may be instituted in the name of the United States against the principal and surety on the bond for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.]

SEC. 4197. CLEARANCE; VESSELS.

(a) WHEN REQUIRED; VESSELS OF THE UNITED STATES.—Except as otherwise provided by law, any vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—

(1) for a foreign port or place;

(2) for another port or place in the United States if the vessel has on board bonded merchandise or foreign merchandise for which entry has not been made; or

(3) outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.

(b) WHEN REQUIRED; OTHER VESSELS.—Except as otherwise provided by law, any vessel that is not a vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—

(1) for a foreign port or place;

(2) for another port or place in the United States; or

(3) outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.

(c) REGULATIONS.—The Secretary of the Treasury may by regulation—

(1) prescribe the manner in which clearance under this section is to obtained, including the documents, data or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;

(2) permit the Customs Service to grant clearance for vessel under this section before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary of the Treasury conditioned upon the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary of the Treasury; and

(3) authorize the Customs Service to permit clearance of any vessel to be obtained at a place other than a designated port of entry, under such conditions as he may prescribe.

[SEC. 4198. The oath to be taken by the master or commander of the vessel shall be as follows:

[District of

[I, (insert the name), master or commander of the (insert the denomination and name of the vessel), bound from the port of (insert the name of the port or place sailing from) to ((insert the name of the port or place bound to), do solemnly, sincerely, and truly swear (or affirm, as the case may be) that the manifest of the cargo on board the said (insert denomination and name of the vessel), now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said (insert denomination and name of vessel) previous to her sailing from this port, I will immediately report the same to the said collector. I do also swear (or affirm) that I verily believe that duties on all the foreign merchandise therein specified have been paid or secured, according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such distress or accident may happen. So help me God.

[Sec. 4199. (a) Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest required under this chapter shall be attached to such manifest and delivered to the appropriate officer of the United States Customs Service at the time such manifest is delivered.

[(b) The following information shall be included on such manifest, or on attached copies of bills of lading or equivalent commercial documents:

[(1) Name and address of shipper.
[(2) Description of the cargo.
[(3) Number of packages and gross weight.
[(4) Name of vessel or carrier.
[(5) Port of exit.
[(6) Port of destination.

[(c) Except as provided in subsection (d), the following information contained on such manifest, or on attached copies of bills of lading or equivalent commercial documents, shall be available for public disclosure:

[(1) Name and address of shipper, unless the shipper has made a biennial certification claiming confidential treatment pursuant to procedures adopted by the Secretary of the Treasury.
[(2) General character of the cargo.
[(3) Number of packages and gross weight.
[(4) Name of vessel or carrier.
[(5) Port of exit.

[(6) Port of destination.

[(7) Country of destination.

[(d) The information listed in subsection (c) shall not be available for public disclosure if—

[(1) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or

[(2) the information is exempt under the provisions of section 552(b)(1) of title 5 of the United States Code.

[(e) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in subsection (c) above, is authorized to establish procedures to provide access to manifests, or attached bills of lading or equivalent commercial documents which shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests or attached bills of lading, or equivalent commercial documents.]

* * * * * * *

[Sec. 4201. The form of a clearance, to be granted to a ship or vessel on her departure to a foreign port or place, shall be as follows: District of ———, ss, ———

[Port of ———:———

[These are to certify all whom it doth concern, that ———, master or commander of the ———, burden ——— tons, or thereabouts, mounted with ——— guns, navigated with ——— men, ——— built, and bound for ———, having on board ———, hath here entered and cleared his said vessel according to law. Given under our hands and seals, at the custom-house of ———, this ——— day of ———, one thousand ———, and in the ——— year of the Independence of the United States of America.]

* * * * * * *

[Sec. 4207. Whenever any clearance is granted to any vessel of the United States, duly registered as such, and bound on any foreign voyage, the collector of the district shall annex thereto, in every case, a copy of the rates or tariffs of fees which diplomatic and consular officers are entitled, by the regulations prescribed by the President, to receive for their services.

[Sec. 4208. The master or person having charge or command of any steamboat on Lake Champlain, when going from the United States into the province of Quebec, may deliver a manifest of the cargo on board, and take a clearance from the collector of the district through which any such boat shall last pass, when leaving the United States, without regard to the place from which any such boat shall have commenced her voyage, or where her cargo shall have been taken on board.]

* * * * * * *

[SEC. 4213. It shall be the duty of all masters of vessels for whom any official services shall be performed by any consular officer, without the payment of a fee, to require a written statement of such services from such consular officer, and, after certifying as to whether such statement is correct, to furnish it to the collector

of the district in which such vessels shall first arrive on their return to the United States; and if any such master of a vessel shall fail to furnish such statement, he shall be liable to a fine of not exceeding fifty dollars, unless such master shall state under oath that no such statement was furnished him by said consular officer. And it shall be the duty of every collector to forward to the Secretary of the Treasury all such statements as shall have been furnished to him, and also a statement of all certified invoices which shall have come to his office, giving the dates of the certificates, and the names of the persons for whom and of the consular officer by whom the same were certified.]

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Chapter Three—Tonnage Duties

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[SEC. 4221. In cases of vessels making regular daily trips between any port of the United States and any port in the Dominion of Canada, wholly upon interior waters not navigable to the ocean, no tonnage or clearance fees shall be charged against such vessel by the officers of the United States, except upon the first clearing of such vessel in each year.

[SEC. 4222. No consul or consular agent of the United States shall exact tonnage fees from any vessel of the United States, touching at or near ports in Canada, on her regular voyage from one port to another within the United States, unless such consul or consular agent shall perform some official services, required by law for such vessel, when she shall thus touch at a Canadian port.]

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TITLE XLIX—REGULATION OF VESSELS IN FOREIGN COMMERCE

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[SEC. 4306. Every vessel of the United States, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector for the district where such vessel may be, with a passport, the form for which shall be prescribed by the Secretary of State. In order to be entitled to such passport, the master of every such vessel shall be bound, with sufficient sureties, to the Treasury of the United States, in the penalty of two thousand dollars, conditioned that the passport shall not be applied to the use or protection of any other vessel than the one described in it; and that, in case of the loss or sale of any vessel having such passport, the same shall, within three months, be delivered up to the collector from whom it was received, if the loss or sale take place within the United States; or within six months, if the same shall happen at any place nearer than the Cape of Good Hope; and within eighteen months, if at a more distant place.

[SEC. 4307. If any vessel of the United States shall depart therefrom, and shall be found to any foreign country, other than to some port in America, without such passport, the master of such vessel shall be liable to a penalty of two hundred dollars for every such offense.

[SEC. 4308. Every unregistered vessel owned by a citizen of the United States, and sailing with a sea-letter, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector of the district where such vessel may be with a passport, for which the master shall be subject to the rules and conditions prescribed for vessels of the United States.]

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TITLE L—REGULATION OF VESSELS IN DOMESTIC COMMERCE

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[SEC. 4332. Every surveyor who certifies a manifest, or grants any permit, or who receives any certified manifest, or any permit, as is provided for in this Title, shall make return thereof monthly, or sooner, if it can conveniently be made, to the collector of the district where such surveyor resides.]

* * * * * * *

SEC. 4336. Any officer concerned in the collection of the revenue may at all times inspect the [register or enrollment or license of any vessel] *certificate of documentation of any documented vessel* or any document in lieu thereof; and if the master or other person in charge or command of any such vessel shall not exhibit the same, when required by such officer, unless the vessel is one which by regulation of the [Secretary of the Treasury is not required to have its register or enrollment or license] *Secretary of Transportation is not required to have its certificate of documentation* or document in lieu thereof on board, such master or person in charge or command shall be liable to a penalty of $100, unless the failure to do so is willful, in which case he shall be liable to a penalty of $1,000 and to a fine of not more than $1,000 or imprisonment for not more than one year, or both.

* * * * * * *

[SEC. 4348. The seacoasts and navigable rivers of the United States and Porto Rico shall be divided into five great districts: The first to include all the collection districts on the seacoasts and navigable rivers between the northern boundary of the State of Maine and the southern boundary of the State of Texas; the second to consist of the island of Porto Rico; the third to include the collection districts on the seacoasts and navigable rivers between the southern boundary of the State of California and the northern boundary of the State of Washington; the fourth to consist of the Territory of Alaska; the fifth to consist of the Territory of Hawaii.]

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[SEC. 4358. The coasting trade between the territory ceded to the United States by the Emperor of Russia and any other portion of the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts.]

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[SEC. 4361. Whenever any vessel of the United States, registered according to law, is employed in going from any one district in the United States to any other district, such vessel, and the master thereof, with the goods she may have on board previous to her departure from the district where she may be, and also upon her arrival in any other district, shall be subject, except as to the payment of fees, to the same regulations, provisions, penalties, and forfeitures, and the like duties are imposed on like officers, as are provided for vessels licensed for carrying on the coasting-trade. Nothing herein contained shall be construed to extend to registered vessels of the United States having on board merchandise of foreign growth or manufacture, brought into the United States, in such vessel, from a foreign port, and on which the duties have not been paid according to law.

[SEC. 4362. The collector of the district of Philadelphia may grant permits for the transportation of merchandise of foreign growth or manufacture across the State of New Jersey to the district of New York, or across the State of Delaware to any district in the State of Maryland or Virginia; and the collector of the district of New York may grant like permits for transportation across the State of New Jersey; and the collector of any district of Maryland or Virginia may grant like permits for transportation across the State of Delaware to the district of Philadelphia. Every such permit shall express the name of the owner, or person sending the merchandise, and of the person to whom the merchandise is consigned, with the marks, numbers, and description of the packages, whether bale, box chest, or otherwise, and the kind of goods contained therein, and the date when granted; and the owner, or person sending such goods, shall swear that they were legally imported, and the duties paid. Where the merchandise, to be so transported, shall be of less value than eight hundred dollars, the permit shall not be deemed necessary.

[SEC. 4363. The owner or consignee of all merchandise transported under the provisions of the preceding section and for the transportation whereof a permit is necessary, shall, within twenty-four hours after the arrival thereof at the place to which such merchandise was permitted to be transported, report the same to the collector of the district where it has arrived, and shall deliver up the permit accompanying the same; and if the owner or consignee shall neglect or refuse to make due entry of such merchandise within the time and in the manner directed, all such merchandise shall be subject to forfeiture; and if the permit granted shall not be given up within the time limited for making the report, the person to whom it was granted, neglecting or refusing to deliver it up, shall be liable to a penalty of fifty dollars for every twenty-four hours it shall be withheld afterward.

[SEC. 4364. Whenever any vessel, licensed for carrying on the fishery, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and

under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port.

[SEC. 4365. Whenever a vessel, licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the value of five hundred dollars, without having such permission as is directed by the preceding section, such vessel, together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture.

[SEC. 4366. The master of every vessel employed in the transportation of merchandise from district to district, that shall put into a port other than the one to which she was bound, shall, within twenty-four hours of his arrival, if there be an officer residing at such port, and she continue there so long, make report of his arrival to such officer, with the name of the place he came from, and to which he is bound, with an account of his lading; and every master who neglects or refuses so to do shall be liable to a penalty of twenty dollars.

[SEC. 4367. The master of every foreign vessel bound from a district in the United States to any other district within the same, shall, in all cases previous to her departure from such district, deliver to the collector of such district duplicate manifests of the lading on board such vessel, if there be any, or, if there be none, he shall declare that such is the case; and to the truth of such manifest or declaration he shall swear, and also obtain a permit from the collector, authorizing him to proceed to the place of his destination.

[SEC. 4368. The master of every foreign vessel, on his arrival within any district from any other district, shall, in all cases, within forty-eight hours after his arrival, and previous to the unlading of any goods from on board such vessel, deliver to the collector of the district where he may have arrived, a manifest of the goods laden on board such vessel, if any there be; or if in ballast only, he shall so declare; he shall swear to the truth of such manifest or declaration, and shall also swear that such manifest contains an account of all the merchandise which was on board such vessel at the time, or has been since her departure for the place from whence she shall be reported last to have sailed; and he shall also deliver to such collector the permit which was given him from the collector of the district from whence he sailed.

[SEC. 4369. Every master of any foreign vessel who neglects or refuses to comply with any of the requirements of the two preceding sections, shall be liable to a penalty of one hundred dollars. Nothing therein contained shall, however, be construed as affecting the payment of tonnage, or any other requirements to which such vessels are subject by law.]

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TITLE LIII—MERCHANT SEAMEN

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Chapter Five—Protection and Relief

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[SEC. 4573. Before a clearance is granted to any vessel bound on a foreign voyage or engaged in the whale-fishery, the master thereof shall deliver to the collector of the customs a list containing the names, places of birth and residence, and description of the persons who compose his ship's company; to which list the oath of the captain shall be annexed, that the list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents.

[SEC. 4574. In all cases of private vessels of the United States sailing from a port in the United States to a foreign port, the list of the crew shall be examined by the collector for the district from which the vessel shall clear, and, if approved of by him, shall be certified accordingly. No person shall be admitted or employed on board of any such vessel unless his name shall have been entered in the list of the crew, approved and certified by the collector for the district from which the vessel shall clear. The collector, before he delivers the list of the crew, approved and certified, to the master or proper officer of the vessel to which the same belongs, shall cause the same to be recorded in a book by him for that purpose to be provided, and the record shall be open for the inspection of all persons, and a certified copy thereof shall be admitted in evidence in any court in which any question may arise under any of the provisions of the Title.

[SEC. 4575. The following rules shall be observed with reference to vessels bound on any foreign voyage:

[First. The duplicate list of the ship's company, required to be made out by the master and delivered to the collector of the customs, under section forty-five hundred and seventy-three, shall be a fair copy in one uniform handwriting, without erasure or interlineation.

[Second. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made, a true and certified copy of the shipping-articles, containing the names of the crew, which shall be written in a uniform hand, without erasures of interlineations.

[Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

[Fourth. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of law which guard the rights of mariners.

[Fifth. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this section, or shall violate the provisions thereof, he shall be liable to

each and every individual injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of one hundred dollars for each offense.

[Sixth. It shall be the duty of the boarding-officer to report all violations of this section to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury and to the United States attorney in his district.]

[SEC. 4576. The master of every vessel bound on a foreign voyage or engaged in the whale fishery shall exhibit the certified copy of the list of the crew to the first boarding officer at the first port in the United States at which he shall arrive on his return, and also produce the persons named therein to the boarding officer, whose duty it shall be to examine the men with such list and to report the same to the collector; and it shall be the duty of the collector at the port of arrival, where the same is different from the port from which the vessel originally sailed, to transmit a copy of the list so reported to him to the collector of the port from which such vessel originally sailed. For each failure to produce any person on the certified copy of the list of the crew the master and owner shall be severally liable to a penalty of four hundred dollars, to be sued for, prosecuted, and disposed of in such manner as penalties and forfeitures which may be incurred for offenses against the laws relating to the collection of duties; but such penalties shall not be incurred on account of the master not producing to the first boarding officer any of the persons contained in the list who may have been discharged in a foreign country with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, certified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew, nor on account of any such person dying or absconding or being forcibly impressed into other service of which satisfactory proof shall also be exhibited to the collector.]

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TITLE LXII.—NATIONAL BANKS

Chapter One—Organization and Powers

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SEC. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession from the date of the approval of this Act, or from the date of its organization if organized after such date of approval until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided,* That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are

insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act, or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary" pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110 (h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge or both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity

of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided,* That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, *the North American Development Bank,* the Asian Development Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided,* That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided,* That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the

stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further,* That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees, but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the associations capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

(1) * * *

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HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

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General notes

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4. *Exemptions.* For the purposes of general note 1—

(a) * * *

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(c) records, diagrams and other data with regard to any business, engineering or exploration operation whether on paper, cards, photographs, blueprints, tapes or other media, **[**and**]**

(d) articles returned from space within the purview of section 484a of the Tariff Act of 1930, *and*

(e) articles exported from the United States which are returned within 45 days after such exportation from the United States as undeliverable and which have not left the custody of the carrier or foreign customs service,

are not goods subject to the provisions of the tariff schedule. *No exportation referred to in subdivision (e) may be treated as satisfying any requirement for exportation in order to receive a benefit from, or meet an obligation to, the United States as a result of such exportation.*

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SECTION XVII—VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT

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CHAPTER 86—RAILWAY OR TRAMWAY LOCOMOTIVES, ROLLING STOCK AND PARTS THEREOF; RAILWAY OR TRAMWAY TRACK FIXTURES AND FITTINGS AND PARTS THEREOF; MECHANICAL (INCLUDING ELECTRO-MECHANICAL) TRAFFIC SIGNALING EQUIPMENT OF ALL KINDS

Notes

1. * * *

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4. Railway locomotives (provided for in headings 8601 and 8602) and railway freight cars (provided for in heading 8606) on which no duty is owed are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.

* * * * * * *

SECTION XXII—SPECIAL CLASSIFICATION PROVISIONS; TEMPORARY LEGISLATION; TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO TRADE LEGISLATION; ADDITIONAL IMPORT RESTRICTIONS ESTABLISHED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

CHAPTER 98—SPECIAL CLASSIFICATION PROVISIONS

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SUBCHAPTER III—SUBSTANTIAL CONTAINERS OR HOLDERS

U.S. Notes

1. * * *

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4. Instruments of international traffic, such as containers, lift vans, rail cars and locomotives, truck cabs and trailers, etc, are exempt from formal entry procedures but are required to be accounted for when imported and exported into and out of the United States,

respectively, through the manifesting procedures required for all international carriers by the United States Customs Service. Fees associated with the importation of such instruments of international traffic shall be reported and paid on a periodic basis as required by regulations issued by the Secretary of the Treasury and in accordance with 1956 Customs Convention on Containers (20 UST 30; TIAS 6634).

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CHAPTER 99—TEMPORARY LEGISLATION; TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO TRADE LEGISLATION; ADDITIONAL IMPORT RESTRICTIONS ESTABLISHED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

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SUBCHAPTER V—TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO THE UNITED STATES-CANADA FREE TRADE AGREEMENT

U.S. Notes

1. * * *

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9. Railway freight cars provided for in subheadings 9905.86.05 and 9905.86.10 are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.

* * * * * * *

SECTION 9703 OF TITLE 31, UNITED STATES CODE

§ 9703. Department of the Treasury Forfeiture Fund

(a) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the "Department of the Treasury Forfeiture Fund" (referred to in this section as the "Fund"). The Fund shall be available to the Secretary, without fiscal year limitation, with respect to seizures and forfeitures made pursuant to any law (other than section 7301 or 7302 of the Internal Revenue Code of 1986) enforced or administered by the Department of the Treasury or the United States Coast Guard for the following law enforcement purposes:

(1) * * *

(2) At the discretion of the Secretary—

(A) * * *

* * * * * * *

(E) the payment of claims against employees of the Customs Service settled by the Secretary under section 630 of the Tariff Act of 1930;

[(E)**]** *(F)* payment for equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or air-

craft to assist in law enforcement functions if the vessel, vehicle, or aircraft will be used in joint law enforcement operations with a Department of the Treasury law enforcement organization;

[(F)] *(G)* payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State or local law enforcement officers that are incurred in joint law enforcement operations with a Department of the Treasury law enforcement organization;

[(G)] *(H)* reimbursement of private persons for expenses incurred by such persons in cooperating with a Department of the Treasury law enforcement organization in investigations and undercover law enforcement operations;

[(H)] *(I)* payment for training foreign law enforcement personnel with respect to seizure or forfeiture activities of the Department of the Treasury; and

[(I)] *(J)* payment made pursuant to guidelines promulgated by the Secretary, if such payment is necessary and directly related to seizure and forfeiture program expenses for—

(i) the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

* * * * * * *

(e) INVESTMENTS.—Amounts in the Fund, and in any holding accounts associated with the Fund, which are not currently needed for the purposes of this section [shall] *may* be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments [shall] *may* be deposited in the Fund.

* * * * * * *

ACT OF JUNE 16, 1937

[AN ACT To expedite the dispatch of vessels from certain ports of call.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in order to expedite the dispatch of vessels carrying passengers operating on regular schedules and arriving at night or on a Sunday or a holiday at a port in the United States at which such vessel is required by law to report arrival and make entry and from which it is required to obtain a clearance, the appropriate customs officer, if the vessel departs during the same night, Sunday, or holiday on which it arrives may, under such regulations as may be prescribed the Secretary of the Treasury, receive the report of arrival and entry of such vessel from and give clearance for such vessel to the master or other proper officer thereof on board such vessel: *Provided,* That bond, as prescribed in section 451 of the Tariff Act of 1930, is given to secure reimbursement to the Government for the compensation of, and expenses incurred by, such customs officers in performing such services, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the

same terms and conditions as in the case of customs officers and employees assigned to lading or unlading at night or on Sunday or a holiday.]

SECTION 965 OF TITLE 18, UNITED STATES CODE

§ 965. Verified statements as prerequisite to vessel's departure

(a) During a war in which the United States is a neutral nation, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall, in addition to the facts required by [sections 91, 92, and 94 of Title 46] *section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91),* to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, deliver to the [collector of customs for the district wherein such vessel is then located] *Customs Service* a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same manner and under the same conditions deliver to the [collector] *Customs Service* like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively.

* * * * * * *

SECTION 9 OF THE ACT TO PREVENT POLLUTION FROM SHIPS

SEC. 9. (a) * * *

* * * * * * *

(e) If any ship subject to the MARPOL Protocol or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, [shall refuse or revoke—

(1) the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91); or

(2) a permit to proceed under section 4367 of the revised Statutes of the United States (46 U.S.C. 313) or section 443 of the Tariff Act 1930, as amended (19 U.S.C. 1443).

Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.] *shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be*

granted upon the filing of a bond or other surety satisfactory to the Secretary.

* * * * * * *

ACT OF OCTOBER 3, 1913

CHAPTER 16.—An Act To reduce tariff duties and to provide revenue for the Government, and for other purposes.

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SECTION IV.

A. * * *

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J. SUBSECTION 1.

A discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States, or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at the time of such importation by treaty or convention or Act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to goods, wares, and merchandise imported in a vessel owned by citizens of the United States, but not a vessel of the United States, if such vessel, after entering an American port, shall before leaving the same be [registered as a vessel of the United States,] *documented under chapter 121 of title 46, United States Code,* nor to such foreign products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade.

* * * * * * *

J. SUBSECTION 3.

Section 130 of this title shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against [vessels of the United States] *United States documented vessels* nor to any vessel owned by citizens of the United States but not a vessel of the United States if such vessel after entering an American port shall, before leaving the same, be [registered as a vessel of the United States.] *documented under chapter 121 of title 46, United States Code.*

* * * * * * *

ACT OF AUGUST 5, 1935

AN ACT To protect the revenue of the United States and provide measures for the more effective enforcement of the laws respecting the revenue, to prevent smuggling, to authorize customs-enforcement areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 1. (a) * * *

* * * * * * *

SEC. 4. Subject to appeal to the Secretary of Commerce and under such regulations as he may prescribe, [whenever the collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, licensed, or numbered] *when the Secretary of Transportation* is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever, from the design or fitting of any vessel or the nature of any repairs made thereon, it is apparent to [such collector] *the Secretary of Transportation* that such vessel has been built or adapted for the purpose of smuggling merchandise, the [said collector shall revoke the registry, enrollment, license, or number of said vessel] *the Secretary of Transportation shall revoke any endorsement on the vessel's certificate of documentation or number (when the Secretary is the authority issuing the number under chapter 123 of title 46, United States Code)* or refuse the same if application be made therefor, as the case may be. [Such collector and all persons] *The Secretary of Transportation and all persons* acting by or under his direction shall be indemnified from any penalties or actions for damages for carrying out the provisions of this section.

* * * * * * *

Sec. 201 **[Repealed.]**

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ACT OF NOVEMBER 6, 1966

AN ACT To require evidence of adequate financial responsibility to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages, to establish minimum standards for passenger vessels and to require disclosure of construction details on passenger vessels, and for other purposes.

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SEC. 2. (a) * * *

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(e) [The collector of customs at] *At* the port or place of departure from the United States of any vessel described in subsection (a) of

this section, *the Customs Service* shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

SEC. 3. (a) * * *

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SECTION 1 OF THE ACT OF FEBRUARY 10, 1900

CHAPTER 15.—An Act Relating to Cuban vessels.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. [That vessels owned by citizens of Cuba and documented as such by officers of the United States shall hereafter be entitled in ports of the United States to the rights and privileges of vessels of the most favored nation, and they and their cargoes shall be subject to no higher charges in ports of the United States than are imposed on the vessels and cargoes of the most favored nation in the same trade.]

* * * * * * *

SECTION 2 OF THE ACT OF APRIL 29, 1908

CHAPTER 152.—An Act To repeal an Act approved April thirtieth, nineteen hundred and six, entitled "An Act to regulate shipping in trade between ports of the United States and ports or places in the Philippine Archipelago, between ports or places in the Philippine Archipelago, and for other purposes," and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago.

[SEC. 2. That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United States from the Philippine Islands which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries.]

* * * * * * *

SECTION 1 OF THE ACT OF JULY 1, 1916

CHAPTER 209.—An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not oth-

erwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and seventeen, namely:

* * * * * * *

[That the internal-revenue taxes imposed by the Philippine Legislature under the law enacted by that body on December twenty-first, nineteen hundred and fifteen, as amended by the law enacted by that body on February fourth, nineteen hundred and sixteen, and the tonnage tax on vessels engaged in foreign trade enacted by that body on February fourth, nineteen hundred and sixteen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is hereby legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed.]

* * * * * * *

THE ACT OF JULY 3, 1926

CHAPTER 757.—An Act To create a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That there is hereby created, in addition to the five great districts provided by section 4348 of the Revised Statutes as amended by the Act of May 12, 1906, a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York.

[SEC. 2. Enrolled and licensed vessels operating in the great district herein created shall be subject to all of the requirements of licensed and enrolled and licensed vessels imposed by sections 4349, 4350, 4351, and 4352 of the Revised Statutes and amendments and laws supplementary thereto: *Provided,* That nothing herein shall affect the rights or privileges reserved to seamen under existing law.]

SEC. 3. Sections 3116 and 3117 of the Revised Statutes are hereby repealed.

ACT OF MAY 4, 1934

[AN ACT Authorizing pursers or licensed deck officers of vessels to perform the duties of the masters of such vessels in relation to entrance and clearance of same.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever, under any provision or provisions of any statute of the United States, it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or purser of such vessel, such acts shall have the same force and effect as if performed by masters of such vessels: *Provided,* That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels.]

SECTION 1403 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1986

SEC. 1403. CREATION OF HARBOR MAINTENANCE TRUST FUND.

(a) * * *

[(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Treasury (from the fees collected under paragraphs (9) and (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985) such sums as may be necessary to pay all expenses of administration incurred by such Department in administering subchapter A of chapter 36 of the Internal Revenue Code of 1954 for periods to which such fees apply.]

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SECTION 9501 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987

SEC. 9501. CUSTOMS USER FEES.

(a) * * *

* * * * * * *

(c) ANALYSIS REGARDING THE CES PROGRAM; EFFECT ON IMPLEMENTATION OF PROGRAM.—

(1) * * *

* * * * * * *

(3) The Commissioner of Customs is authorized to obtain from the operators of centralized cargo examination stations information regarding the fees paid to them for the provision of services at these stations.

* * * * * * *

SECTION 123 OF THE CUSTOMS AND TRADE ACT OF 1990

SEC. 123. ANNUAL NATIONAL TRADE AND CUSTOMS LAW VIOLATION ESTIMATES AND ENFORCEMENT STRATEGY.

(a) * * *

* * * * * * *

(d) COMPLIANCE PROGRAM.—The Commissioner of Customs shall—

(1) devise and implement a methodology for estimating the level of compliance with the laws administered by the Customs Service, and

(2) include as an additional part of the report required to be submitted under subsection (a) for each of fiscal years 1994, 1995, and 1996, an evaluation of the extent to which such compliance was obtained during the 12-month period preceding the 60th day before each such fiscal year.

[(d)] *(e)* CONFIDENTIALITY.—The contents of any report submitted to the Committees under subsection (a) or (c)(2) are confidential and disclosure of all or part of the contents is restricted to—

(1) officers and employees of the United States designated by the Commissioner of Customs;

(2) the chairman of each of the Committees; and

(3) those members of each of the Committees and staff persons of each of the Committees who are authorized by the Chairman thereof to have access to the contents.

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