RICHARD
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EXECUTIVE COMMITTEE MEETING

FRIDAY, JUNE 10, 1988

U.S. Senate

ORIGINAL

Committee on Finance

Washington, D.C.

The meeting was convened, pursuant to notice, at 10:07 a.m. in Room SD-215, Dirksen Senate Office Building, the Honorable Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Moynihan, Baucus, Bradley, Mitchell, Pryor, Rockefeller, Daschle, Packwood, Roth, Danforth, Chafee, Heinz, and Wallop.

Also present: Ambassador Alan Holmer, Deputy United States Trade Representative; The Honorable John Mohara, Assistant Secretary of the Treasury; Ms. Judy Bello, Deputy General Counsel, USTR; Ms. M. Jean Anderson, Chief Counsel, International Trade, Department of Commerce.

Also present: Messrs. Jim Gould, Staff Director and Chief Counsel; Jeff Lang, Trade Chief Counsel; Mike Mabile, Trade Counsel; and Josh Bolten, Chief Trade Counsel, Minority.

(The press release announcing the meeting follows:)

The Chairman. This hearing will come to order. Those who are standing will please be seated.

On May 27, we completed the meeting with the Ways and Means Committee to resolve the differences between the committees on the Canadian Free Trade Agreement; and at that time, I said I would come back to you, the committee, and report to you as to those things we had accomplished.

And we prepared a text, and our staff has consulted with the minority, the staff of this committee, with the majority and the minority of the Ways and Means Committee, the International Trade Commission, and the Administration.

Every word of this draft has been reviewed by all of these people; and as far as I am concerned, it represents the conference agreement; but the purpose of this meeting is to review that to which we have agreed, and I would like to know the feelings of any of the members who were not a part of that conference concerning it.

I also want the comments of the Administration; I asked them to be here today to let them have an opportunity to express their views about the bill.

Let me comment about one matter that has been in the press the last few days, a matter that Chairman Rostenkowski is concerned about; and I am concerned about it, too.

As you can see from the agreement, there are some disagreements between the two Houses; and that is specifically

on the lobster provision--the Senator from Maine--and the entry into force provision.

In addition, we have one that the Justice Department opposes; and that is the direct implementation of the countervailing duty and antidumping decisions. However, the Canadian Government continues to have some reservations about the Baucus/Danforth procedure, even though the Administration had signed off on it.

Finally, the Administration has been trying to soften the uranium industry opposition to the agreement by working out an agreement with them that--as I understand it--motivates a new tax on the utility industry. As a result, Chairman Rostenkowski believes the Administration is still not prepared to accept the formulation worked out as we were consulting.

From my standpoint, this committee performed its work in record time. We have a bill that the Administration would admit is completely consistent with our obligations under the trade agreement and is consistent with the kind of legislation we have had in the past for the purpose of implementing trade agreements.

In fact, it even goes beyond those implementing bills by preempting the law of several States of the United States. Now, all of that was done by May 27, 1988, almost a week before the June 1 deadline that I had agreed to, along with

the majority leader of the Senate and Chairman Rostenkowski and Speaker Wright back in February.

I discussed with Ambassador Yeutter whether the Administration had any problems with our taking a week or so to draft the legislative language, at the time of our meetings with the Ways and Means Committee when they concluded; and he said that he did not.

So, our staffs have worked during this recess to come up with the legislative language at the earliest possible opportunity. In fact, that bill was ready Monday morning, although the Administration still had some technical changes that I understood they wanted to bring about; and those changes brought about a day's delay.

So, from my point of view, I believe we have carried out our obligations under the February 17 letter with respect to moving for the implementation of this bill quickly.

Now, the Administration's agreement with us was that they would accept the provisions worked out in the consultative process, provided they are consistent with the agreement and its implementation and are appropriate to carry out the fundamental purposes.

That is not very tight language, but I do have serious reservations about the Administration and the Canadian government coming in at the last minute to make what I believe to be substantive changes in the provisions we have

worked out over the last three weeks.

Now, gentlemen, perhaps we could simply have a discussion of the conference agreement. I think this document needs some more work, which is what I understand the Administration wants.

So, I don't want to close out this matter today.

I would like further to see if--do we have a quorum yet?

Mr. Gould. Not a quorum sufficient to report out the nominations, sir.

The Chairman. How long would it take for us to cover the nominations?

Mr. Gould. There was a hearing on the nominations on May 25, Mr. Chairman; and I don't think we have been notified of any opposition to any of the nominations. So, I don't think it would take long.

The Chairman. All right. If there are no questions, I would like for us to vote on that and finish that vote when we get a quorum.

The nominations are of Jill E. Kent, to be Assistant Secretary of the Treasury for Management; W. Allen Moore, to be Under Secretary of Commerce for International Trade; and Jan W. Mares, to be Assistant Secretary of Commerce for Import Administration.

Are there any objections to those?

(No response)

The Chairman. Subject to a quorum being here, we will report them out.

Senator Baucus. Mr. Chairman, I move the nominations.

The Chairman. All in favor then make it known by saying "Aye."

(Chorus of ayes)

The Chairman. Opposed?

(No response)

The Chairman. Fine. Let's wait for the final confirmation of that when we get a quorum.

Mr. Gould. All right.

The Chairman. I would like for you to go ahead with the text of the agreement, if you will, at this point. We do have an 11:00 deadline, gentlemen. Votes start at that time, as I understand it.

Mr. Lang. Mr. Chairman, we have handed out a document dated June 8, 1988 and entitled Resolution of Differences Between the House Ways and Means Committee, and so on. It is a thin document.

Essentially, this document is the same as the comparison of the Ways and Means and Senate provisions that was before the meeting between the Ways and Means Committee and the Finance Committee, except that it shows, after the House provision and the Senate provision in each area, the agreement that was resolved upon at that meeting, rather than

some staff recommendation or whatever filled that slot before.

This document was prepared jointly with the Ways and Means Committee staff so that, when Ways and Means looks at this document, they will be looking at the same thing you are looking at.

The actual legislative text has been available to staff since yesterday, and the Administration also made available a final version of the Statement of Administrative Action, except I think for Chapter 19 and some other matters on which they still would like to see some changes.

Most of these differences were fairly technical and were worked out at staff level and then approved by the conference. So, I propose to go over only the big things, especially in light of your 11:00 deadline.

The Chairman. All right. Fine. Without objection.

Mr. Lang. The first one I would mention is on page 3, item 5, the remedies provided.

Senator Packwood. What page?

Mr. Lang. Page 3, item 5, in the middle of the page. There, the problem was that the House allowed private parties to sue the States; the Senate did not, and the Senate provision was accepted.

The next one, I think, that I think is going to be of interest to the committee is on page 9, item 19, on GATT exceptions. This is the lobster provision; and here, there

was no agreement. So what is reflected in the legislative text is that a provision in italics appears at the point where the lobster provision should go in the legislative text.

Italics indicate a Senate provision that has not been accepted by the House; boldface indicates a House provision that has not been accepted by the Senate. In this case, of course, there is no House provision; there is only the Senate provision in the legislative text.

On page 11, beginning in the middle of the page, item 24, on the establishment of binational panels --

The Chairman. Let me make a point here, Mr. Lang.

This is a most unique procedure that we have been involved in; and the way it actually works is: When you get yourself a disagreement between the House and the Senate, in effect the Administration has the option. Isn't that what it amounts to?

Mr. Lang. Yes, sir.

The Chairman. And that is what they are exercising in these instances.

Mr. Lang. The issue, Mr. Chairman, at the middle of the page on page 11, concerns the Senate confirmation of panelists. The Finance Committee position was that the panelists should be subject to Senate confirmation. The House position is that, while they be required to submit

financial disclosure statements and meet certain standards, they would essentially be appointed by USTR.

The conference agreement is that they would be appointed by USTR, but subject to a number of restrictions. The main one is that, immediately following the provision on appointment of panelists, is an authorization of appropriations for the operation of these panels; and it is limited to a one-year authorization of appropriations.

So, the whole panel system--the money the United States contributes for the operation of the panel system--is subject to annual authorization of appropriations which would be referred to the Finance Committee in the Senate and the Ways and Means Committee in the House.

The actual appointment of panelists also takes place on an annual basis. Essentially, what happens is that each January the President would submit his list of 25 United States citizens he would like to see on the panels.

Their term of office does not begin until April 1 of the same year; and during that period, he is to consult closely with the Ways and Means and Finance Committees about the panelists and is free to replace panelists, presumably if the committees have serious problems with them.

The panelists then serve from April 1 of that year until March 31 of the next year. Meanwhile, a new group of panelists, of course, is designated on January 1 of the next

year, and go through the same process.

So, you have an annual appointment process and an annual authorization of process that are linked together.

The only minor additions that had to be made in that in the technical drafting of it was: What if a case was filed in the first three months of the first year, and there the President's designated panel may serve. And the other was the Administration needed something to cope with the problem of the number of designated panelists running out during the year--they took other jobs or they got sick or whatever--where the panel system just got overloaded.

So, the technical drafting also includes allowing them to start the same process each July 1, which would terminate October 1. Those panelists, however, appointed on October 1 of any year would serve only half a year until the March 31 deadline.

So, that is the conference agreement as a substitute for Senate confirmation of panelists.

The next issue I think you might be interested in is on page 13. It is item 27, and it concerns the constitutional issue that the chairman raised.

The House position was that the President could advise the agencies which administer the antidumping and countervailing duty laws of decisions of binational panels; and presumably, the agencies would then comply with the

panel decisions. The reason for that was that the Justice Department expressed a concern that, if a panel's decisions were directly implemented, it would raise an issue under the appointments clause.

The Senate position was that the panel decisions be directly implemented by the agencies concerned; but if a constitutional challenge based on the appointments clause were successful, then the Administration proposed language for implementation of panel decisions would go into effect, which essentially said that the President is authorized to implement those decisions, implying that he would have the power not to implement them, but also the Administration hoped implying that he would implement them in all or most cases.

Senator Packwood. Could I comment here, Mr. Chairman?

The Chairman. Yes, of course.

Senator Packwood. It seems to me we are taking a terrible risk, although I would be willing to bet $100.00 that the Bentsen provision, just as it was initially introduced, was legal; but I am not sure I would bet $10,000.00 on it. I wouldn't bet this bill on it necessarily.

I thought we adopted a reasonable proposal here, and we added my little provision to it, that if by chance the way Senator Bentsen had it was unconstitutional, we would have a fallback position. Then, the Justice Department says

they won't go along with that. They want to risk all or nothing, it seems to me, on the chairman's position being constitutional; and the House sort of has the same position.

I am curious if the Administration has softened any, or is the Administration's or Justice's position still no, that it is going to be all or nothing; and if it happens to be nothing, they will lose the key provision of this agreement that will make it fail, for all practical purposes.

The Chairman. I might say on that that I was certainly amenable to the fallback position that Senator Packwood wanted to have; but we found the Judiciary Committee of the House was adamant in their opposition to it.

So, we finally took the first part of ours. What we were concerned about was intervention by a President politicizing a decision that had been made by the tribunal or by the panel. That was our concern; but I would like to hear Ambassador Holmer's comments in response to that.

Ambassador Holmer. I don't know if I can speak for the Justice Department, but you do have a situation where the conference agreed to language that the Justice Department finds substantially less agreeable than the language that came out of the Senate Finance Committee.

I think we are in the process right now of seeing if it is possible to get the House Judiciary Committee to agree to language that is very close to what originally came

out of the Senate Finance Committee.

It has taken us a little while to get those meetings scheduled. We are attempting to do that on an urgent basis today and through the weekend, and my hope is that we may be able to persuade the House Judiciary Committee that the original Senate Finance Committee proposal was an appropriate one.

The Chairman. Mr. Ambassador, I am in a position--and I think we are in the committee--that we can't go back on the agreement we made with the House in that conference; but if you can get them to come back to the Senate's original position, I think that we would look on it kindly and we would take another look in this committee.

Senator Bradley. Mr. Chairman, I would just like to echo your words and Senator Packwoood's words. I really think that without the authorized portion of the amendment, it is going to be challenged; and the whole central provision of the agreement could be thrown out.

I mean, that is the reason we thought we would go in. I know Senator Bentsen and I had long discussions about it. Senator Packwood offered the addition.

I think that you need both of those things in there. I wasn't in the conference, so I don't know the dynamics; but I do know that without the provision that was offered by the Finance Committee in a final agreement, it is only

going to be a matter of time until the whole thing falls apart.

Senator Packwood. This was the position of the House, and 90 percent, I think they are right. I just don't want to risk the bill on it.

Their Judiciary Committee is so convinced that the provision as we have it, that you have to automatically implement it, that there is no question that it is constitutional.

Justice Department thinks it is unconstitutional. I would be willing to bet an awful lot that Justice is wrong, but I wouldn't bet the whole bill on the possibility of that.

That is why I think what Lloyd just said is fine. We can't go back on our agreement, but if the House would at all be receptive to what we initially talked about and the Justice Department will go along, that is what we ought to try to do.

The Chairman. Yes. We are not finishing up here today, anyway. So, if you can work that out and come back with something that is close to what we had agreed to earlier on a fallback position, I think you can see that we would be amenable to it--but subject to our looking at that wording.

Senator Rockefeller. Mr. Chairman, this may not be in sequence, but Chapter 19 in the Statement of Administrative Action is not yet in this; and that is the part which

reflects the utility subsidy provision, which Senator Moynihan graciously worked out and which this committee accepted.

My reason for that is, in view of the Canadian government's reaction to the Baucus/Danforth provision on the subsidies, I am now concerned that the utilities study, which would be done by the Canadian government and by our Government with respect to whatever subsidies may come into the electric power generation business including coal power, that that may not take place because a lot of coal people feel that the provinces will not respond to the national government in Canada.

I have written the ambassador from Canada on this, and I got back a letter which was less than declarative. Quite frankly, I guess my point--and there is nothing this committee can do about it--would be that my vote on this on the floor I think is going to--I believe the Canadians are going to do this.

They will be willing to move forward on this study, but so far they have not indicated, in reaction, that they will; and my vote will depend in some way, quite frankly, on assurance from the Canadians that they will move forward on this study as will we.

There is nothing that the committee can do about it. It is just a statement that I want to enter into the record

at this point.

The Chairman. Thank you, Senator. Yes, Senator Moynihan?

Senator Moynihan. Mr. Chairman, first of all, I want very much to agree with Senator Rockefeller. That is a valid expectation on our part; and on the other hand, I do think we have reason to believe that we will go forward. It is a good faith agreement.

In that respect, in our last meeting of the conference, this report provision was agreed to; and the Administration also agreed--I believe, Ambassador--I know--that there would be a statement in writing that electricity would not be subject to, if I may say, the Baucus/Danforth provisions with respect to subsidy.

If I may say, Mr. Chairman, that is a material consideration to a number of us on the committee; and I really would like to have an answer if I could.

The Chairman. Could I ask for a delay on that? I see that I have a quorum here, and that is a fragile thing.

Senator Moynihan. Of course.

The Chairman. Could I get a reaffirmation of the vote on the nominations that were previously stated?

All in favor say "Aye."

(Chorus of ayes)

The Chairman. Opposed?

(No response)

The Chairman. And then, I would like to bring up one other item while I have a quorum. I have had a request from the majority leader to have the Interstate Commerce Commission do a study insofar as the possibilities of a free trade agreement between the United States and Japan.

This is something that Senator Mansfield has spoken on often and Prime Minister Tokeshida discussed with the majority leader when he was in this country. We have the authority to request that--either this committee or the Ways and Means Committee does--kind of a study.

Would you comment on it, Mr. Lang?

Mr. Lang. Yes, sir. Under the Tariff Act, you can request studies on international trade from the U.S. International Trade Commission. They are called Section 332 studies, and you have done that frequently in the past.

We have distributed a letter called Senator Byrd's Proposed Draft, which his staff worked out with the staff of the ITC so as to make sure that the request was within the capabilities of the commission, the time lines were acceptable to them, and that sort of thing.

Our understanding is that this letter is something the commission feels it can cope with in carrying out the study.

Senator Moynihan. Mr. Chairman, I think it is an excellent idea.

The Chairman. Senator Roth?

Senator Roth. Mr. Chairman, I do think it is a good idea. The only further question I have is whether it might be wise to add other countries, particularly Taiwan and possibly South Korea.

The reason I say that is it seems to me there are a number of possibilities in that area that we may want to look at, particularly in view of the fact that the European Community in 1992, I think, is supposed to remove their further barriers and become a common market.

I don't know whether that will be realized, but certainly that is the intent.

What I am suggesting is that we may want to take a broader look, not only at Japan but some of the other countries, if it is possible to get the ITC to do that at the same time.

The Chairman. Senator, I think that that is a possibility and one that we ought to explore. I would hope that we can limit it to just this one this morning. I will be glad to bring it up at any time in the future.

Senator Roth. I will be happy to go along with that, but I would like to suggest that we proceed along those lines I outlined.

The Chairman. Yes. Further comments? Senator Baucus?

Senator Baucus. Mr. Chairman, I want to soundly endorse

development, but one should note that unless we move ahead on the Canada-U.S. free trade area, that is a little superfluous.

(Laughter)

Senator Bradley. And so, I would hope that every member who has endorsed this concept of a study so soundly would be strongly supporting the Canada-U.S. free trade agreement.

The Chairman. A point well made. Any further comments?

(No response)

The Chairman. Do I have a motion?

Senator Moynihan. I so move.

The Chairman. All in favor of the motion make it known by saying "Aye."

(Choruse of ayes)

The Chairman. Opposed?

(No response)

The Chairman. All right. Senator Moynihan, would you restate your idea? I apologize.

Senator Moynihan. Not in the least, Mr. Chairman. We reached an understanding at our last meeting of the conference committee that electricity was not to be subjected to the challenge, and I don't see it here. I see the Ambassador nodding in agreement and taking advice of counsel, and perhaps he would speak to this?

The Chairman. Yes. Ambassador Holmer?

Ambassador Holmer. Senator Moynihan, that is my basic understanding. Ms. Bello has been following that more directly, and I would like for her to have a chance to respond to that.

Senator Moynihan. Please.

Ms. Bello. Senator, we have no problem with that whatsoever. There was some confusion because the reference used during the discussion was to the statement of managers, rather than the statement of administrative action; but we certainly have no problem, including that in the Statement of Administrative Action, so long as the committee agrees.

Senator Moynihan. Then, I believe the Statement of Administrative Action is what we have in mind, Mr. Chairman. And if we could agree to that, then I think we can resolve this question.

Senator Baucus. Mr. Chairman?

The Chairman. Senator Baucus?

Senator Baucus. Could I ask what it is to be agreed to? I didn't hear that. I am sorry.

Ms. Bello. There has been a considerable amount of discussion with both your staffs in particular. The discussion was at that time to put in the statement of managers a statement saying basically that electricity--as I understand it--would be exempt from this new procedure, the Baucus procedure, on which the committee had agreed.

The question now is whether or not there is an agreement in the committee to put that rather in the Statement of Administrative Action.

Senator Moynihan. Could I say, Senator Baucus, that perhaps the chairman would have a view on the matter? Or Mr. Lang may have a view.

The Chairman. No, I have not been into this one.

Senator Baucus. Mr. Chairman, I don't think the understanding is whether electricity is exempt. That is not the understanding.

As I understand it, the question is whether the coal industry could suggest that the Canadians subsidize power. It is a question of standing, rather than --

Theoretically, the power industry in this country, as I understand it, is still --

The Chairman. Apparently, we have some question about the understanding. Do you have the transcript?

Mr. Lang. Yes. I have the transcript here, and the result of the understanding as we got it is shown on page 15 of the document we were going through, Item 31.

We did understand it to be a decision of outstanding, that is, this is a question about whether a so-called upstream industry would have standing to complain about a downstream product. Coal is upstream in the chain of products to the electricity.

So, the question is: Could the coal industry complain about Canadian electricity subsidies? I think that is what Senator Baucus is saying.

Senator Moynihan. Mr. Lang, it seems to me that the press released issued thereafter said that the statement shall also clarify that the provision does not create new information gathering authority with respect to subsidies on electrical utilities.

If we could have an administrative statement to that effect, I think we would be fine, would we not?

The Chairman. Let me understand. Senator Baucus?

Senator Baucus. I think what we are trying to do is to assure that the coal industry cannot request the study, and not that the American power industry cannot. That is what we are trying to do here.

Senator Moynihan. Mr. Chairman, I think that is fair.

The Chairman. Mr. Lang, do you see any problem with that?

Mr. Lang. That is what we understood you to be saying.

The Chairman. You don't see any problem with that, do you?

Mr. Lang. No, I don't think the House has a problem with that either.

The Chairman. That is fine.

Senator Baucus. I think that was our understanding.

The Chairman. Good. All right.

Senator Moynihan. Mr. Chafee and Mr. Mitchell were concerned. Are they in agreement? Oh, yes, they are.

The Chairman. All right.

Senator Chafee. I have bigger concerns down the pike.

The Chairman. All right.

Mr. Lang. Now, Mr. Chairman, on page 18 of the document we were going through are the entry into force provisions.

Senator Chafee. Mr. Chairman, have we finished totally Item 31?

The Chairman. Thirty-one?

Senator Chafee. On page 15.

The Chairman. I had thought we had finished, unless someone had a further comment.

Mr. Lang. I think the Administration had something they wanted to say?

The Chairman. Mr. Ambassador, did you have a comment?

Ambassador Holmer. This is the language with respect to the Baucus subsidy language?

The Chairman. Yes.

Ambassador Holmer. We do, Mr. Chairman. First, as I believe all the staffs of the Senators know, we did basically a redraft of the language that we saw from Monday that, as I understand it, is entirely noncontroversial; and I think all parties believe it more clearly resembles the original deal.

There are two additional items that we wanted to call to your attention.

The Chairman. Let me first interrupt there. Mr. Lang, are you in concurrence with that?

Mr. Lang. No, I don't think so. The language we worked with on the Baucus/Danforth language was actual statutory language in that case, which had been worked out between Senators Baucus and Danforth with the Administration, line by line.

In that limited case, we were not working with concepts.

Senator Bradley. What page is that?

Mr. Lang. The summary of it is reflected on page 15 of the document we are working through.

The Chairman. Page 15, Item 31, Senator Bradley.

Senator Bradley. Yes.

Mr. Lang. I think if there is new language on this, we need to look at that and make sure that it is acceptable.

The Chairman. So, we don't have a sign-off apparently on that.

Senator Bradley. All right.

The Chairman. So, let's have staff work with the trade office on that.

Ambassador Holmer. That would be fine, Mr. Chairman.

Then, two more substantive issues, and let me just describe those to you.

The first is we would propose to have three new sentences in the Statement of Administrative Action, the effect of which is to state that the countervailing duty law is normally the preferred remedy to address foreign subsidies on imports into the United States.

The language, if I could just read it, is as follows:

"This provision is consistent with the free trade agreement under which countervailable subsidies are normally to be dealt with by the countervailing duty laws of each country and final determinations under those laws will be subject to binational panel review under Chapter 19 of the FTA.

"The Administration does not intend to use Section 301 for the purpose of circumventing the CVD in Chapter 19 procedures. Any determination to initiate an investigation pursuant to Section 302(c) shall be treated as an affirmative determination under Section 302(b)(2)."

And my understanding, Mr. Chairman, is that this language is acceptable to the principal author of this provision, Senator Baucus.

The Chairman. Would you care to comment, Senator Baucus?

Senator Baucus. Yes, Mr. Chairman. That is essentially correct, but I do want to make it clear that there may be instances where Section 301 might be preferable. And the

language that Ambassador Holmer reads that normally the CVD law would be applicable, but it is the intent of the statute that there may be instances where Section 301 would be preferable, whether it is the nonferrous metal industry or whatever it might be; but there may be instances where Section 301 would be preferable.

That is the understanding that we have.

Ambassador Holmer. Right, and we concur with that, Mr. Chairman.

The Chairman. Mr. Lang, do you see any problem with that, or any of the other members?

Mr. Lang. Let me just explain what is going on here because it is a little arcane. Under current law, there is an administrative remedy which can be excited by a private petition against foreign subsidies.

If the subsidies are injurious in the United States, a U.S. industry files with the Commerce Department and the ITC, and a ministerial process begins. No presidential discretion to investigate that subsidy.

The remedy, if a domestic industry is injured, is an additional duty that is in addition to all current duties, that completely offsets the subsidy.

Section 301 has sometimes been thought of as an import remedy as well as an export remedy, and its language is so broad that it allows that interpretation. I think what the

Canadian government is concerned about here is that, in putting in place the Baucus/Danforth process and leaving open the possibility of a study of the foreign subsidy under 301 cluster of laws--it is actually Section 305--the U.S. Government would drop countervailing duties as a remedy for this subsidy and turn to Section 301, thus avoiding the binational panel system.

I think that is the issue that this language is intended to resolve.

The Chairman. Yes, I think I have some questions here. Are we talking about limiting the use of 301 on subsidies? Is that what the Administration is talking about?

Mr. Lang. We need to look at the language a little closer.

The Chairman. I want to hold on that. I am not ready to agree to that then. I want to understand it better. Senator Danforth, did you have a question?

Senator Danforth. Yes, I do, Mr. Chairman. It is my understanding that the proposal is to say that current law is going to be maintained. In other words, it is not the intention of this legislation to curtail any 301 remedies that presently exist.

The Chairman. Now, is that right? That was my concern.

Ambassador Holmer. Yes, Mr. Chairman and Senator Danforth, that is my understanding.

Senator Danforth. And that, then, the meaning of this is that 301 isn't going to somehow be used as a way of diverting countervailing duty cases into some new and heretofore unused cause of action; but if 301 is now available in these cases, that is not going to be in any way cut back.

Ambassador Holmer. That is correct, Senator.

Senator Chafee. I would like to ask a question on that, if I might?

The Chairman. All right. Senator Chafee?

Senator Chafee. What is the purpose of a binational panel dealing with subsidies in the normal countervailing duty process, which goes under the binational panel, if there is a way of running around the whole thing?

Ambassador Holmer. I think that is a third question, Senator, but the purpose of this language is just to state clearly that the expectation is that normally the process that would be used to address subsidies on products that are imported into the United States would be through the countervailing duty law.

Senator Chafee. Which goes to the binational panel.

Ambassador Holmer. Which does go to the binational panel.

Senator Chafee. But then, the Canadians enter a deal whereby the U.S. Government or the parties decide to use the 301 procedure which avoids the binational panel and

keeps it entirely in the U.S. hands. Is that correct?

Ambassador Holmer. The reason why we thought it was important to include the word "normally" in this language--that we would normally use the countervailing duty law--is I can see a situation where there would be, for example, an export subsidy on a manufactured product or an agricultural product--because those are stricken under the FTA as well--that would clearly violate the GATT and/or clearly violate the free trade agreement.

And if that were to be the case, it would seem to me that we should retain the ability to use Section 301 in those kinds of circumstances.

Senator Chafee. What does this do to the agreement? What do the Canadians think of this?

Ambassador Holmer. This is entirely consistent with the agreement, and my understanding is that the Canadian government would find this kind of language helpful.

Senator Chafee. I think we want to work a deal here, Mr. Chairman, that is going to be acceptable. I look on this Canadian Free Trade Agreement as the most important thing we have done in this Finance Committee in a long time, way beyond that trade agreement, the trade legislation we did the other day.

And I don't want this thing to fold up on some particular problem. It seems to me that this is the way the process

started. Is that right?

Ambassador Holmer. I think that is correct, Senator Chafee. This is language that I believe the Canadian government would find helpful to include in the Statement of Administrative Action.

Senator Chafee. You seem tenative.

Senator Packwood. Are we talking about the same thing?

Senator Bradley. No.

Senator Packwood. Are you on the globalization issue?

Senator Chafee. No, I am just on this subsidization problem.

Senator Danforth. On the 301.

Senator Chafee. Yes, the 301. All right. Holmer on the agreement says this is fine.

(Laughter)

Ambassador Holmer. That is correct, Senator.

Senator Chafee. Well, say it with more vigor and authority.

(Laughter)

The Chairman. All right. Let's proceed because we only have 10 minutes left here before we start voting.

Mr. Lang. I think he had one more.

Ambassador Holmer. All right. That was the first item, Mr. Chairman. The second relates to --

The Chairman. Let me ask: How the House signed off on

this?

Ambassador Holmer. We have talked with them at the staff level. Inasmuch as the Baucus language originated in the Finance Committee, I think if this commitee were to be comfortable with it, they would be, too. They basically deferred to this committee on that question.

The Chairman. Let's find out about that. We have to get that resolved.

Mr. Lang. Yes, sir. I understand.

The Chairman. All right. Let's go on to your next point.

Ambassador Holmer. All right. Issue 2 would be simply to delete the references in the Baucus language to Canada, the effect of which would be to make this process apply generally around the world and not only to Canada.

We believe this would be a useful change, one, because we think it should help us in our subsidies negotiations in the Uruguay Round--which is a big priority for us--and second, it does address some concerns that have been raised on the Canadian side that somehow they have been singled out for special treatment with respect to this particular proposal.

Therefore, we would hope, Mr. Chairman, that we could make the Baucus/Danforth language apply more broadly and essentially apply worldwide.

Senator Danforth. Mr. Chairman?

The Chairman. Senator Danforth?

Senator Danforth. Mr. Chairman, I am told that there is general agreement on this globalization idea. I simply want to state my concern about it and my opposition to it.

As I understand the position of Canada, it is this: They are our neighbor; they are our friend; they are our largest trading partner. Therefore, they should be entitled to a special trade agreement with the United States.

And furthermore, they shouldn't be singled out for special treatment. I think that that is an inconsistent position. I think they want it both ways.

This trade agreement with Canada ratifies a whole system which is pervasive in the Canadian economy of widespread subsidies. It ratifies those subsidies contrary to what our hope was in bringing Canadian subsidies under some kind of discipline.

We did not accomplish that in this trade agreement. Not only didn't we accomplish breaking Canadian subsidies under discipline, but we subjected our normal statutory remedy against subsidies to binational panels.

So, in the end, the enforcement of our countervailing duty laws is in the hands of binational panels. Half the time the majority of those panels are going to be Canadian; not only that, but this is a tariff elimination measure.

A tariff elimination measure has the effect of doing away with those tariff offsets that we have created in our country to try to match the subsidies that other countries have put in place, for example in the light industry.

Yes, we have protected our light industry with very modest subsidies, and the reason for that is to provide some sort of equity in the face of a subsidy scheme that the Canadians have.

Well, now we give away our tariffs. We further give away our statutory remedy, or weaken at least our statutory remedy, for subsidies. Now, in order to try to provide at least some measure of equity, Senator Baucus and I came up with a proposal to provide for accelerated fact gathering in the case of suspected Canadian subsidies.

The fact gathering doesn't mandate any action. It simply provides that, in the case of suspected subsidies, the facts are brought together on an accelerated basis.

Now, the Canadians say they don't want any special attention to our subsidies; they don't want any accelerated process of identifying and measuring subisidies. They want to be treated just exactly as they are treating everybody else.

I think as a practical matter, what this is going to mean is that if we treat everybody the same, it is going to confuse the situation. It is probably going to call for

increased manpower in order to gather facts internationally.

I also wonder whether a Canadian free trade agreement should be used as a vehicle for changing U.S. law, not only with respect to Canada, but with respect to the world. I wonder how other countries are going to respond to this news that suddenly we have created a fact gathering system which is applicable to them.

So, Mr. Chairman, for all of these reasons, I really think this is a lousy idea; and I think that this is caving in to Canada and basically saying that, in the face of Canadian subsidies, the position of the United States is just to throw up our hands and say, well, have at it.

The Chairman. Senator Packwood?

Senator Packwood. I disagree, I think, with Senator Danforth's premise. We didn't ratify the subsidies; we didn't win the battle. It is put aside for another day; but to say that we ratified them, that we approve of them, that that is it because we didn't win on every single negotiating point, we ratified them--that misses the point.

One of the first things we are to do under this agreement is to attempt to negotiate the subsidies downward; but if we leave the provision in the bill the way we have it, in essence it is a least-favored-nation clause for Canada. We say, boy, you enter into a free trade agreement with us, and we will hit you especially.

I was never wild about the provision to begin with, but I understood that, for getting this agreement, I would go along with it. I may share Senator Danforth's conclusion in that we have taken what I regard as a bad provision and universalized it and made it bad every place.

But I would be willing to do that for the sake of not aiming it solely at Canada. My first preference would be to get rid of it all together, but I don't think we ought to start with the premise that we have ratified the subsidies and say forever more in this agreement we said they are good, we ratify them, and that is it.

We simply did not win the battle. We didn't negotiate on them. We will hopefully get rid of them, but we didn't ratify them.

The Chairman. What I am concerned about is that I think Canada is getting almost paranoid on this. If they keep sending Derek Burney down here to renegotiate things or to try to change things, they are going to continue to delay this particular agreement, delay it to a point that finally we are not going to have an agreement.

I thought, frankly, that the Baucus/Danforth provision was a very modest one. It just talks about monitoring and gathering information; and I have a hunch that if we had globalized it in the beginning, that the Administration would have been having a stroke telling us how much work we were

piling on them. It just wouldn't make sense; we couldn't keep up with all those things.

And they were going to have to increase the size of the staff, and now substantially you have agreed to it.

Senator Baucus. Mr. Chairman?

The Chairman. Yes, go ahead.

Senator Baucus. I was wondering whether the Ambassador has checked with other countries to see what their reaction is to the globalization proposal? This is something that came up very quickly at the last minute. Secretary Baker called me on it.

It is clear that there had not been a lot of thought given to it at the time. I am wondering whether the Administration has received any reaction to it or, in fact, has thought much about the reaction of other countries to this globalization?

Ambassador Holmer. We have not had reaction from other countries yet, Senator Baucus.

The Chairman. What have you heard from the House? What does the House say about this?

Ambassador Holmer. The House has not as yet reviewed this question. I think, here again, inasmuch as the Baucus language originated in the Senate Finance Committee, I would expect that they would be likely to defer to this committee.

Of course, we will need to pursue it with them.

The Chairman. I frankly would like to see us defer action today and think about it a little bit, about just how far reaching this is.

Senator Roth. Mr. Chairman?

The Chairman. Yes?

Senator Roth. Am I correct in understanding that, as a practical matter, the same can be done with respect to Canada under globalization as if it were limited? It is just a question if you get more involved on a global basis, it is a question of personnel; but it doesn't in any way restrict or limit what can be done vis-a-vis Canada. Is that correct?

Ambassador Holmer. That is correct.

Senator Roth. Is it also true that this is a worthy procedure, that it might be valuable elsewhere as well as in the case of Canada?

Ambassador Holmer. I think that is right. I mean, it is probably the source of some amustment, at least to your staffs, that the Administration wasn't all that enthusiastic about the Baucus language in the first place and now wants to apply it to the entire world.

(Laughter)

Ambassador Holmer. We do think it will be helpful in the Uruguay Round, and we do believe it will address a very

serious concern on the Canadian side that is worth addressing.

The Chairman. Gentlemen, I would like to defer this one. I am willing to listen to some more arguments on it, but let's get on to some of these other points if we can.

Senator Mitchell. Mr. Chairman, may I make just one very brief statement?

The Chairman. Yes.

Senator Mitchell. This adds to what you have said and what Senator Baucus and Senator Danforth have said. Not only have the Canadians exhibited what you have described as "paranoia," there is also the furtherance of a continuing double standard on trade matters that has been evident for a long time.

We have sat here and listened to repeated expressions of concern by the Administration that, if we do certain things, the Canadians won't like it. And yet, since the trade agreement was signed, the Canadians have unilaterally undertaken a whole series of actions, which, Mr. Chairman, you will recall I read off at the conference, on their own in a variety of areas contrary to the spirit, intent and--in some cases, in my judgment--the letter of the agreement without ever the slightest expression of concern for what our reaction would be.

The Canadians do not wring their hands and say: What will the Americans think if we do this? When they think some

sector of their economy, some region of their nation, some portion of their population needs help, they do it. They announce it, and we find out about it in the newspapers.

So, I just think we have to try to shed the notion that we have constantly to base our decisions on what they might think when, in fact, they understand unilateral action in advancing their national economic interests; and that, I think, is the attitude that we should have, not to do things out of spite or out of retaliation or anything else, but a clear assessment of what our interest is in acting on that.

I think this whole discussion about the subsidies illustrates that to a tee.

Senator Bradley. Mr. Chairman?

The Chairman. Yes, Senator Bradley?

Senator Bradley. Mr. Chairman, just so that we remember that when the Canadian assistant to the Prime Minister--whoever it was--came down, he was giving reaction to something that was not negotiated, but was added in this committee.

So, this is not something that is a reopening of a negotiation, but it is a legitimate response to something that the Congress, because we saw the situation and made certain changes, and the Canadians reacted to it. That is what the reaction was, and that was what the visit was about.

Senator Baucus. Mr. Chairman?

The Chairman. Senator Baucus?

Senator Baucus. It is clear that we did not add anything that was not within the framework in terms of the agreement. I mean, one should not leave the impression that this country has added anything that is not within the framework of the terms of the agreement because we have not done that.

Canada, too, will be passing implementing language, implementing as they see it the agreement. We are implementing the agreement as we see it, consistent with the agreement.

There is no question but this is fully consistent with the agreement. We are just updating the collection of data so that we can use our ordinary CVD laws that have been in existence for some time. We are not changing our law. We are just updating the data and the studies so that we can use our law. There are no changes in the law. That is all this is.

The Chairman. We are not going to make a decision on this today. So, let's move on, but I want to highlight one other point that is of concern to me and what I understand is happening.

That is the question on the uranium industry and what is being done there. I am told we have been presented with some 70 pages as an addition, and we are talking about an

item of substantial significance which is being termed as a fee, I believe, when it looks very much like a tax to me, which would be under the jurisdiction of this committee.

And if you start trying to do taxes on a fast track, I think you are going to be in trouble; but I would like the comments of the Administration on that.

Senator Wallop. Can I make an observation?

The Chairman. Yes.

Senator Wallop. It is true that some of us from those States have been working with the Administration. We now have, to my understanding, the framework of an agreement which the utilities industry, the uranium producers, the Treasury Department, and--as I understand it--the Canadians have agreed to. I share your concern about making this process fast track in taxes; but I think the argument can be made that they are not taxes.

The Chairman. That argument may be made, but they will be a long time convincing me.

(Laughter)

Senator Bradley. Mr. Chairman?

The Chairman. Yes?

Senator Bradley. I wonder if we could get a fee on incomes over $1 million a year in the fast track procedure here because, you know, that is essentially what the Administration is proposing to do with regard to a tax on

all uranium used in reactors, as I understand what they have added.

It is troubling to me, and I am sure it has to be troubling to you.

The Chairman. Would the Administration care to comment on that?

Ambassador Holmer. Yes, I would like to have John Mohara, who is the Assistant Secretary of the Treasury, respond to this, Mr. Chairman.

The Chairman. All right. Mr. Mohara?

Mr. Mohara. Thank you, Mr. Chairman. I just want to briefly state the process that we went through and talk a little bit about the substance mentioned by both you and Senator Bradley, as well as Senator Wallop.

First of all, let me state that on February 17, there was an exchange of letters between the Congress and the Administration on what the process would be; and that exchange of letters said that we would honor whatever language was sent by the Congress to the Administration and resubmit that language back in the form of legislation.

We intend to honor that. If you send us the language having to do with uranium, if you send us the language having to do with plywood or anything else in this agreement, we will send it back; and if you don't, we won't. We are not pasting anything on to this agreement.

We will live consistent with this February 17 exchange of correspondence. I want to say that up front.

What happened in the case of uranium is what happened in the case of a number of other areas of interest raised by this committee and other members of Congress, which was that there were problems occasioned by the Canada Free Trade Agreement, namely, the Canada Free Trade Agreement repealed Section 161(b) as far as Canada was concerned of the Atomic Energy Act.

Section 161(b) provides that the United States will maintain a viable uranium industry. It is a matter of law. And the way that is done is by imposing import restrictions on foreign uranium.

Canada already supplies 75 percent of the uranium to the United States, and it is very good uranium. The free trade agreement in effect would wipe out those restrictions, any restrictions, and put the industry is severe jeopardy.

They have sued the United States and have won at both the district and the appellate court levels on whether or not the United States must impose Section 161(b). That case is pending before the Supreme Court; it should be decided this month.

The Senate Energy Committee, as we understand it, has recommended to you that you include and that they would include in the language a provision which would impose an

import fee on Canadian uranium, totally inconsistent with the agreement that was negotiated, which would repeal Section 161(b).

And we attempted, at the request of that industry and several members of both Houses of the Congress, to try and work out a solution to the problem that existed, which is that we could end up with a provision that is totally inconsistent with the free trade agreement, namely what the Senate Energy Committee has done; and that would preclude the ability of us to deal with the uranium question generally.

We entered into negotiations to try to come to a resolution. Those negotiations have taken about six weeks; and frankly, the reason we didn't come to the tax rating committees, was that we didn't think they would ever get resolved. I mean, that is my personal view; and I was jointly head of the team of the Administration that worked with them.

The proposal that we ultimately came to an agreement with and that we would support provides for the following three things. It provides for a substitute of what the Senate Energy Committee has recommended to you, which is an import fee. And the substitute is that we would raise $1 billion $750 million, $450 million from the Federal Government, $300 million from the miners of the uranium industry, and $1 billion

from the utility that would be put into a fund.

The fund would be used for two purposes. The first purpose would be to purchase uranium to help the industry over the transition period of the next five years, which is occasioned by the problem that was occasioned by the free trade agreement repealing Section 161(b).

The second purpose of the fund would be clean up mill tailings to the tune of $1 billion that sit out there and are a serious and valid environmental hazard, of uranium sitting on the ground and ultimately getting into the water table of this country.

And that would be used to do that; and that is important because it is estimated that if you don't do it now, it is going to cost a great deal more money to do it later. The thought was that, if we could wrap this whole thing up in one situation--in one proposal--that we would solve a very serious environmental problem; and so we wanted to do it.

The third thing that the proposal does is to set up a private corporation ultimately--five years down the pike--that would take over the uranium enrichment business of the Government; and by taking that over, by privatizing it, we think we will make that better able to compete in the world market where there is enrichment of uranium going on in other countries.

Now, Senator Bradley's point was that we simply added a

tax on the utilities. The tax is simply not a normal tax on people over $100,000. The tax, which is within the jurisdiction of your committee--and there is no question about that--no one ever supposed there wasn't--it is under the jurisdiction of this and the Ways and Means Committee.

But what the tax really amounts to is the settlement of a lawsuit, over certain unrecovered costs that are estimated to be between $3 and $8 billion, although nobody can verify that, that are carried on both the Government's books and the industry's books--the utility industry's books--for unrecovered costs occasioned by enrichment.

The Government says that the utilities owe us so much money; the utilities would dispute that. As a result the utilities have agreed to pay $1 billion in settlement of that dispute.

Now, those are the elements of this package. I would be glad to answer any questions that you have about them.

We support that package. I understand the problem occasioned by it coming late in the process. That was not our intent. We simply didn't get our job, and I apologize to this committee and to the Congress for that; but we think we have a valid proposal that deals with some serious problems here that were occasioned by the free trade agreement, and that is why we entered into the process and did what we did.

Senator Packwood. Mr. Chairman?

The Chairman. Senator Packwood?

Senator Packwood. John, that is a very candid answer. I appreciate it. As a former chairman of this committee, I will tell you what my misgivings are.

This is clearly a controversial agreement; and our fast track authority is being perpetually attacked by other committees, as usurpations of their rights; and we put things in that we like and take care of ourselves and jam it down their throats.

There is no question this is a tax, and there are a lot of people who don't like the deal, anway. But I can see us "cutting off our nose to spite our face" if we start down this road; and one of these days, we are going to lose all of our fast track authority to the detriment of the Congress and the country and this committee.

And that is my hesitancy, to see it attached to this agreement, that I just think that we are asking for a myriad of troubles now and in the future if we do it.

Senator Wallop. Could I just make a small rebuttal of that, Senator Bentsen?

The Chairman. Sure. Senator Wallop?

Senator Wallop. Mr. Chairman, I understand what Senator Packwood is saying and Senator Bentsen. But the problem is you are in danger of losing your fast track authority by

virtue of using it to destroy industries when there is no other means of negotiation available.

So, either way, you have a problem. I think the more important thing to do is to look at this less as an assault on the Finance Committee's turf--and as a member of th committee, I don't want it assaulted--as a pretty reasoned to an environmental problem, to the settlement of a lawsuit, and to the survival of an industry, which does not really come down as a major conflict with the Canadian government and has settled problems that are going to take more expense, more time, and more controversy in the future.

The Chairman. Are there further comments?

(No response)

The Chairman. All right. And I do understand that you have some more work you are trying to do in regard to this issue.

Senator Wallop. Mr. Chairman?

The Chairman. Yes, Senator Wallop?

Senator Wallop. I would just like to make one other observation. All three points of the settlement were part of the Uranium Revitalization Act, which we have passed.

Senator Bradley. Mr. Chairman?

The Chairman. Yes, Senator Bradley?

Senator Bradley. If I could, which the Senate passed with full awareness that the bill would go nowhere in the

House. The Senate passed it, in fact, with people on the floor saying: Let me have this vote because I won't embarrass you that we are bailing out a whole utility sector that owes $8 billion and we are going to let them out for $1 billion.

So, it did pass the Senate; it did not pass the House. It is extremely controversial; and to add on to that the tax component, in my view, really does threaten the fast track process.

I understand that the Administration wanted to be accommodative to certain people who do have legitimate problems, but I think that this is really not the place to try to do that.

Senator Wallop. But those certain people who have legitimate problems are American people, and the tailings cleanup is a very, very legitimate environmental concern, which ought not to be overlooked.

Here is an efficient, clean way of resolving that problem. It certainly is not threatening to the Canadian government; it is not threatening to the integrity of the legislative process. And certainly, I was not one of those Senators who said: Oh, please do this for my industry; I promise you it will not go anywhere, and I will not try any further. I promise you that I would try further, and I will try further.

And I think this committee ought to recognize two things: that the American people are threatened environmentally in many areas of this country by the tailings problem, and an industry is needlessly threatened for survival, which makes both no sense from the national security standpoint and no sense from the fast track standpoint.

The Chairman. Senator, it is a very complex one. It is very extensive. It is a major regulatory provision that would not normally be on a free trade agreement. Those are all things--and it comes late in the day--that give me concern in trying to understand it and seeing that we are doing what is proper in this matter. Mr. Mohara?

Mr. Mohara. Mr. Chairman, let me just comment in fairness. I will be glad to take whatever blame there is to take for getting this thing to you late.

The Chairman. All right.

Mr. Mohara. It was an arduous process, and I feel very badly that we didn't get it to you earlier. It was not personal blame necessarily, but we were involved in a process that was very extensive in trying to get an agreement not only within the industry, within the Government, which I have learned since I have been back is no day at the beach.

But in fairness, the point about the fast track that Senator Packwood made is a valid point. I understand that.

I was a member of the staff of the Ways and Means Committee in 1974 when that was written. On the other hand, we have got a problem here.

The problem is that the Senate Energy Committee says: Put Title I in the bill. And Title I is in in direct conflict with the agreement.

Now, what we have tried to do, and what this gentleman over here--my pal from across the way--has tried to do is to work out a consensus with the Congress and the committee in virtually every area that it could. I just happened to get this one; he has done the easy ones, and they have given me the hard ones.

(Laughter)

Mr. Mohara. But what we are trying to do is work out a consensus on this issue, as you have tried to work it out on other issues. I don't know if this is the answer. We think it is a valid answer; it is complicated.

But we didn't do it just because we didn't have anything better to do; we did it because there is a problem there, and the problem is: How do we solve the dilemma of what to do about uranium vis-a-vis the Canadian Free Trade Agreement?

That is why we did it.

The Chairman. Thank you, Mr. Mohara. Are there further comments?

(No response)

The Chairman. Did you have other matters, Mr. Lang, in the agreement that you wanted to present?

Mr. Lang. The only one I wanted to bring to your attention was the difference in the entry into force provisions, which is laid out on page 18 of the sheet.

It is sufficient to say that the two bodies could not agree on the entry into force provisions; so the House provision is carried in boldface in the draft, and the Senate provision in italics. And that is the way it would go down if both committees approve the agreement.

The Chairman. Gentlemen, if there are no further questions, we will stand adjourned.

(Whereupon, at 11:20 a.m., the meeting was adjourned.)

C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Session of the Committee on Finance, held on June 10, 1988, were held as appears herein and that this is the original transcript thereof.

WILLIAM J. MOFFITT
Official Court Reporter

My Commission expires April 14, 1989.

CHAIRMAN - MR. BENTSEN, PACKWOOD, DASCHLE, DAVIS, MITCHELL, DANFORTH, MOYNIHAN, PRYOR, ROCKEFELLER, CHAFEE, ROTH, WALLOP, HEINZ, BRADLEY

UNITED STATES SENATE
COMMITTEE ON FINANCE

EXECUTIVE SESSION

Friday, June 10, 1988 -- 10:00 A.M.
Room SD-215, Dirksen Senate Office Building

A G E N D A

1. The Committee will review results of the meetings between the Committee on Finance and the Committee on Ways and Means on recommendations to the Administration on legislation to implement the Canada free trade area agreement.

2. Nomination of Jill E. Kent to be Assistant Secretary of the Treasury for Management

3. Nomination of W. Allen Moore to be Under Secretary of Commerce for International Trade

4. Nomination of Jan W. Mares to be Assistant Secretary of Commerce for Import Administration

DRAFT 6/8/88

The United States - Canada Free-Trade Agreement Implementation Act

Statement of Administrative Action

The implementing bill for the United States - Canada Free-Trade Agreement (FTA) approves and implements the free-trade agreement (FTA) negotiated by the United States with Canada under the authority of section 102 of the Trade Act of 1974, as amended by Title IV of the Trade and Tariff Act of 1984.

The implementing bill makes certain changes in United States law that are necessary or appropriate to implement the FTA. This Statement of Administrative Action, required under the provisions of section 102 of the Trade Act of 1974, briefly summarizes the most important provisions of the FTA and sets out significant administrative actions proposed to implement the FTA. Also included as part of this Statement are (1) an explanation of how the implementing bill and proposed administrative action change or affect existing law; and (2) a statement of reasons why the implementing bill and proposed administrative action are required or appropriate to carry out the Agreement.

It should be noted that because the FTA is a bilateral trade agreement, most changes in U.S. law and regulation implementing the Agreement will apply only with respect to Canada. U.S. law and practice with respect to other countries, their nationals, and firms are left undisturbed.

It is also worth observing that many provisions of the FTA will not require any change in U.S. law or administrative procedure. In numerous cases this is so because existing U.S. laws and regulations are "grandfathered" (i.e., exempted) from the obligations of the FTA or because U.S. law and practice are already in conformity with the obligations imposed by the Agreement. Where U.S. 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 FTA impose obligations only on Canada.

In a few instances where there have been frequent questions from the public or the Congress, the Statement notes examples of specific statutes, regulations, or practices that do not have to

be changed as a result of the Agreement. Because this Statement is designed to describe changes in U.S. laws and regulations proposed to implement the FTA, however, the Statement concentrates on those changes and generally does not attempt to enumerate instances in which no change in existing law or practice will be required.

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

Chapters One, Two and Twenty-One: General Provisions

A. Summary of FTA Provisions

Chapters One, Two and Twenty-One of the FTA set out provisions that, for the most part, have general application to the rest of the Agreement. Chapter One makes clear that the FTA establishes a free-trade area in accordance with Article XXIV of the General Agreement on Tariffs and Trade (GATT). The Chapter also sets out the general objectives of the Agreement, including the liberalization of trade in goods and services, removal of barriers to investment, facilitation of fair competition, and the establishment of a foundation for further bilateral and multilateral trade liberalization.

Under Article 103 of the Agreement, each party must ensure compliance with the obligations of the FTA at the federal, state or provincial, and local level. For the most part state, provincial and local governments must conform to the same obligations as those applicable to the parties' federal governments, and are subject to the same exceptions that apply to federal measures. Some chapters of the FTA, however, do not apply to the states, either by virtue of their scope (for example, Chapter Four, "Border Measures," and Chapter Thirteen, "Government Procurement") or as a result of a specific exception for state measures (such as Chapters Six, "Technical Standards," and Seventeen, "Financial Services").

Chapter One also establishes two general rules. First, Article 104 makes clear that the United States and Canada retain their respective rights and obligations under all preexisting agreements to which they are both parties. In the event of an inconsistency between the FTA and any such other agreement, the FTA's provisions will prevail to the extent of the inconsistency, unless otherwise specified in the Agreement. Second, the FTA recognizes a general principle of "national treatment." That principle is given specific application in other provisions of the Agreement.

Chapter Two defines certain terms that appear frequently in various chapters of the Agreement.

Chapter Twenty-One sets out a number of provisions of general applicability. Article 2101 makes provision for data collection and tabulation for purposes of administering and enforcing the FTA. Article 2102 ensures public awareness of each party's measures by requiring the parties to publish promptly and, whenever possible, in advance, all generally applicable laws, regulations, procedures and administrative rulings. Article 2103 makes clear that the FTA's annexes are to be considered part of the Agreement itself.

Under the terms of Article 2105, the FTA is to enter into force on January 1, 1989, provided that there has been an exchange of diplomatic notes certifying that the parties have completed their respective domestic legal procedures. The FTA will remain in force unless either Canada or the United States terminates the Agreement upon six months' notice. Article 2104 permits the parties to amend the FTA in the future subject to their respective domestic legal requirements.

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

Section 2 of the implementing bill sets out the purposes of the bill, making clear, for example, that the FTA creates a "free-trade area" for purposes of Article XXIV of the GATT. Section 101 serves to approve the FTA (including two exchanges of letters concluded contemporaneously and forming an integral part of the FTA) and this Statement, in accordance with the procedure set out in the Trade Act of 1974.

Article 2105 of the Agreement requires that the parties exchange notes certifying that they have each completed necessary legal procedures as a final condition of entry into force of the Agreement. Section 101(b) of the bill establishes as a condition of entry into force of the Agreement that the President first determine that Canada has taken satisfactory steps to comply with the obligations of the Agreement. This provision, together with that regarding the effective date of U.S. legislation, is intended to deal with a situation in which U.S. implementing legislation is enacted well before the scheduled entry into force of the Agreement, and before implementing measures have been taken in Canada. Its goal is to ensure full implementation of the Agreement. The Administration would not exchange notes permitting entry into force of the Agreement unless and until the President was satisfied that Canada had similarly complied with the obligations of the Agreement. Those obligations include the obligation in Article 103 of the FTA to ensure compliance by provincial and local governments with the Agreement.

In implementing this provision, every effort will be made to scrutinize Canadian implementing measures, including by drawing on experts in Canadian law and advice from the Congress and the private sector with regard to problems of which they may be aware. It is expected that this process of scrutiny and public exposure would uncover any significant problem with the terms of Canadian implementing measures (or the absence of Canadian action on existing measures that require amendment to conform with the Agreement). The Administration understands that Canada intends similarly to assure itself that the United States has taken necessary implementing measures. Neither country anticipates that significant problems will arise, but both are sensitive to

the need to assure that the balance of benefits in the Agreement is not impaired by inadequate implementation. The President's determination will not in any sense waive U.S. rights to challenge Canadian measures under the dispute settlement provisions of the Agreement. Much will depend on the application of laws and regulations, and even the most careful process of scrutiny may not reveal problems until after the Agreement is actually in force. Further, while subsection 101(b) will be implemented to assure that the balance of benefits negotiated exists from the outset of the Agreement, some issues on both sides may be better dealt with through dispute settlement than by delaying entry into force.

Subsection 101(c) requires the United States Trade Representative (USTR) to report to the Congress major existing Canadian practices (and their legal authority in Canada) that the USTR considers will require amendment of Canadian law, regulation, policy or practice to conform with Canada's obligations under the FTA. This report, which will facilitate the determination required under subsection 101(b), must be submitted within sixty days of enactment of the implementing bill, but not later than December 15, 1988. The reference to Canadian practices would include practices of provincial (including local) governments.

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

Subsection 102(a) provides that a provision of the FTA will not be given effect as a matter of domestic law to the extent such provision is in conflict with federal law. This subsection will not prevent implementation of federal statutes consistently with the FTA, where permissible under the terms of such statutes. Rather, the subsection reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the trade agreement.

The Administration has made every effort to include all laws in the implementing bill and identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the FTA. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations rules or orders that can be implemented without change in the underlying U.S. statute. Accordingly, at this time it is the clear expectation of the Administration that no changes in existing federal law, rules, regulations or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that will be assumed

by the United States under the FTA.

In the unlikely event that, after enactment of the implementing bill, there remain provisions of U.S. statutes that are in conflict with the Agreement, subsection 102(e) affords, for the thirty month period following entry into force of the FTA, access to "fast-track" legislative procedures for necessary remedial legislation, including remedial legislation required as a result of dispute settlement cases under Chapter Eighteen, and legislation required or appropriate to implement amendments to the Agreement.

Subsection 102(b) provides that in the event of any conflict between the FTA and state or local laws and regulations (including laws taxing or regulating the business of insurance), the FTA will prevail to the extent of the conflict. The subsection is a consistent with established Constitutional preemption doctrine. The provision is required to implement the obligations that the United States undertook with respect to the states and local governments under Article 103 of the Agreement.

The reference in subsection 102(b) to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Several provisions of the FTA (for example, Chapters Fourteen, relating to services, and Sixteen, governing investment) do apply to state and provincial measures regulating the insurance business, although "grandfathering" provisions in the FTA limit the Agreement's application to future measures only. Given the requirement of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the FTA's provisions covering the insurance business to be given effect with respect to state insurance law. Although the insurance business must, for statutory reasons, be specifically mentioned in the implementing act, insurance is in every other respect treated in the same manner under the FTA and the implementing bill as other services covered under the Agreement.

In practice, and pursuant to paragraph (3) of subsection 102(b), state compliance with the provisions of the FTA will be encouraged and facilitated through close cooperation and consultations between the Executive Branch and the state concerned. Moreover, the President will consult in accordance with section 306(c)(2)(A) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114c(2)) through an intergovernmental policy advisory committee established under that section with state governments in order to assist states in conforming their laws and practices with the Agreement. The consultations will begin immediately upon the enactment of the implementing bill. It is not anticipated that the FTA will create any significant new limitation on state laws and regulations, and this consultative process should enable any necessary steps to be undertaken in the most cooperative and least burdensome

manner possible.

Paragraph (4) of subsection 102(b) authorizes the United States to bring an action in court in the unlikely event that there is an unresolved conflict between a state law, or the application of a state law, and the FTA. This authority is intended to be used only as a "last resort," in the event that efforts to achieve consistency through the cooperative approach discussed above have not succeeded. In determining whether to exercise the authority of this paragraph, the Attorney General would consider the advice of the USTR as to whether the Canadian Government had objected to the state measure in question and the extent to which Canada was taking necessary measures to assure conformity of Canadian provincial measures with the FTA.

Subsection 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state or local government, or against a private party, based on the provisions of the FTA. A private party thus could not sue (or defend suit) against the United States, a state, or private party on grounds of consistency (or inconsistency) with the FTA. This provision is similarly intended to preclude a private right of action attempting to require, preclude or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority in conformity with the FTA, unless the statute itself explicitly requires conformity with the FTA and a private right of action is otherwise allowable under such statute. This subsection will not preclude a private right of action based on the specific provisions of the implementing bill or other provisions of law.

Subsection 101(d) of the bill requires that, to the extent possible, all federal regulations included in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the FTA are to be developed and promulgated within one year of the Agreement's entry into force. As a practical matter, those regulations required to implement U.S. obligations under the Agreement at the time of its entry into force will be promulgated at that time. With respect to provisions of the Agreement that enter into effect or may be invoked at a later date and thus require a future modification of federal regulations, the bill requires such modifications to be made within one year of such effective date or date the provision is invoked. As a practical matter, implementation would most likely be timed to take effect on the date of the entry into force of the FTA obligation or at the time the provision is invoked.

2. Administrative Action

As required under Chapter Twenty-One, the Administration will ensure that the Department of Commerce and other appropriate U.S. Government agencies will collect, tabulate, and analyze data necessary to administer and enforce the provisions of the Agreement.

Data in addition to that currently available will be made available to the Government of Canada at its request. Government agencies will ensure that information of a business confidential nature contained in any U.S. or Canadian data exchanged pursuant to the Agreement is adequately protected from unauthorized disclosure.

Chapter Three: Rules of Origin

A. Summary of FTA Provisions

1. General Rule

Chapter Three of the FTA establishes rules of origin for determining whether goods imported into the United States from Canada or into Canada from the United States are eligible for the preferential tariff treatment accorded by the FTA to goods originating in those parties. The FTA provides that goods wholly produced in the United States and/or Canada will qualify for such preferential treatment. Goods containing third-country materials will qualify for preferential treatment if the materials undergo, in one or both of the parties, a sufficient degree of processing or assembly to result in a designated change, specified in Annex 301.2, in tariff classification under the Harmonized Commodity Description and Coding System (Harmonized System); that is, processing and/or assembly must result in changes in the product that are physically and commercially significant. With respect to some goods (generally, assembled products), the FTA also requires that at least half of the cost of manufacturing the goods be attributable to U.S. or Canadian materials, and/or direct costs of processing incurred in the United States and/or Canada.

The rules contain a safeguard provision, set outin Article 301(3), denying FTA treatment to any goods altered merely to circumvent the rules of origin. Also, Article 302 and Interpretative Rule 2 of Annex 301.2 provide that goods that are further processed in a third country before being shipped to one of the parties will not qualify for FTA treatment. Specifically, this means that goods returned to the United States under the Harmonized System counterpart of the current TSUS 807.00 program, which provides for duty collection only on the foreign value added to U.S. components sent abroad for assembly, will not be eligible for FTA tariff treatment if shipped to Canada without being further processed in the United States to an extent that again confers U.S. origin under the FTA rules.

2. Special Rules for Textiles and Apparel

Section XI of Annex 301.2 covers textiles and textile products. As a general rule, textile and apparel products will not be considered products of either Canada or the United States unless they undergo a "double transformation" in either or both countries. For example, a garment must be produced in the United States or Canada from fabric produced in the United States or Canada to be considered to originate in Canada or the United States and thereby qualify for the preferential duty. Products which do not qualify are dutiable at the full MFN rate of duty.

Under rule 17 of this section, however, the United States and Canada have agreed to a limited exception to the general rule. The exception takes the form of a tariff rate quota (TRQ). The TRQ permits U.S. exporters to receive preferential tariff treatment for 10.5 million square- yard equivalents of non-wool apparel and 1.1 million square- yard equivalents of wool apparel made in the United States from "third country" fabric, i.e., fabric produced in a country other than the United States or Canada. Similarly, rule 17 allows for FTA tariff treatment for apparel made in Canada from fabric imported from third countries. This exception is limited to annual levels of 50 million square-yard equivalent for non-wool fabrics and to 6 million square-yard equivalent for wool fabric. This exception will be renegotiated at the end of 10 years from the date the FTA enters into force. A temporary exception is also provided by rule 18 for non-wool fabric and made-up articles, woven or knotted in Canada from yarn produced in a third country, which will qualify for FTA treatment only up to an annual level of 30 million square-yard equivalent, and only through December 31, 1992. Imports of goods subject to these exceptions that are above the allowed annual levels will be subject to MFN duties.

3. Automotive Products

Article 1005 provides that the rules of origin in Chapter Three for automotive products shall apply to all automotive products imported into the United States from Canada, regardless of whether they are imported pursuant to the Agreement Concerning Automotive Products between the Government of Canada and the Government of the United States of America that entered into force definitively on September 16, 1966 (the Auto Pact). Automotive products imported into the United States must satisfy the FTA rule of origin requirements to qualify for duty-free status under the Auto Pact.

4. Revision

Article 303 of the FTA requires the United States and Canada to consult regularly to ensure that Chapter Three is being properly administered. It further provides that the parties may agree to revise the FTA's rules of origin to take into account developments in production processes or other matters.

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

a. General

Section 202 of the implementing bill provides for legislative enactment of Articles 301 through 304 and of that part of Annex 301.2 of the FTA entitled "Interpretation." Future changes to these elements of Chapter Three would require legislative imple-

mentation, which could be sought under the "fast-track" provisions of section 102(e) of the bill or any similar applicable authority that might be enacted. Section 202(d) of the implementing bill also provides for the President to proclaim, as a part of the Harmonized System Tariff Schedules, the rules set forth under the heading "Rules" in Annex 301.2 of the FTA, as well as a specified technical clarification referred to in section 202(d). Agreed modifications to these rules could be proclaimed under section 202(d), subject to the procedural requirments discussed below under "Revision."

The proposed bill would further authorize the Administration to issue regulations governing the exportation to Canada of apparel products that are cut, or knit to shape, and sewn, or otherwise assembled, in either the United States or Canada from fabric produced or obtained in a third country. The purpose of any such regulations would be to implement and, if appropriate, allocate the tariff rate quota for exports to Canada under rule 17 of Section XI.

b. Automotive Products

Section 202(e) of the implementing bill also authorizes the President to proclaim such modifications to the definition of Canadian articles (relating to the administration of the Auto Pact) in the general notes of the Harmonized System Tariff Schedules, as may be necessary to conform that definition with Chapter Three of the FTA. Special authority to modify the automotive products rule is discussed under Chapter Ten.

c. Interim Rules

In the event the Harmonized System is not adopted and implemented by the United States prior to the date on which the FTA enters into effect, section 104(b) of the implementing bill grants the President authority to proclaim interim rules of origin consistent with the FTA. The text of the interim rules must be published in the Federal Register at least 30 days before the date of entry into force. Any modifications of the interim rules proclaimed after the Agreement enters into force are also subject to the consultation and layover requirements of section 103 of the implementing bill, discussed below.

d. Revision

Section 202(d) of the implementing bill authorizes the President to proclaim such modifications to the rules set forth under the heading "Rules" in Annex 301.2 as may from time to time be agreed to by the United States and Canada, subject to the consultation and layover requirments of section 103. Under section 103, before proclaiming such a modification the President must: (1) obtain the advice of the private sector (pursuant to section 135 of the Trade Act of 1974) and the International Trade Commission; (2) report the action proposed, the reasons therefor, and the advice received

to the Committees on Ways and Means and on Finance; and (3) consult with those committees during a period of at least 60 days.

e. Territorial Application

Section 202(f)(7) of the implementing bill defines, for purposes of section 202, the term "territory" as it applies to the United States. This definition is taken from Article 201 of the FTA and is not intended to imply that the United States does not consider foreign trade zones to be a part of the customs territory of the United States.

2. Administrative Action

a. Purpose of Rules of Origin

The rules of origin in Chapter Three are intended to restrict the benefits of the FTA to the two parties and to prevent other parties from obtaining the FTA's benefits. For this reason, the rules are designed to ensure that any goods that do not wholly originate in one of the parties must undergo substantial processing and substantial change in one or both of the parties in order to be eligible for FTA benefits. The rules of origin prohibit, both implicitly and explicitly, processes that could circumvent the purpose of the rules of origin. As an example of an implicit prohibition, the FTA rules prevent undenatured ethyl alcohol with an alcohol content greater than 24 percent or denatured alcohol of any strength produced in a third country from becoming eligible for preferential treatment under the FTA, regardless of any further distilling by any method it might undergo.

The explicit prohibitions are set forth in Article 301(3). Generally, but not exclusively, the prohibition in Article 301(3)(c) is aimed at "reverse" processing of goods in a party after they have been processed in the other party so as to qualify for preference under the rules of origin. Examples of such reverse processing include: separation in the importing party of third-country orange juice from orange-flavored drinks produced in the exporting party; separation in the importing party of third-country sugar from sugar-containing goods produced in the exporting party; and disassembly in the importing party of goods assembled in the exporting party that contain third-country components, and separate sale of those components.

Article 301(3)(c) would also operate generally to disallow, as a direct cost of processing, royalty or license fee payments made to a related company. Intercompany royalty or license fee payments between related companies, one of which is in the United States and the other in Canada, will be allowed as a direct cost of processing, but only to the extent that such payments are in accordance with the arms-length standards of the revenue authority of the party in which the paying company is located. Article 301(3)(c) would also disallow, as a direct cost of processing, payments to a "middleman" in one of the parties for the benefit

of a person or entity of a third country.
The prohibitions in Article 301(3)(a) and (b) will be applied in the same manner as under the Generalized System of Preference and the Caribbean Basin Initiative programs. The Administration expects that Article 301(3)(c) will be used infrequently. The well-established right to configure merchandise in such a way that it is within the scope of one tariff provision that is more advantageous than another will not be infringed in any respect. The exercise of this right by itself will not be presumed to be circumvention.

The rules of origin in Chapter Three of the FTA were designed with the structure of the parties' external tariffs in mind. Any significant change in the rates of duty or structure imposed by either party could alter the performance of the rules of origin, which are intended to restrict the benefits of the FTA to the two parties. If Canada were to propose such changes in its external tariff, the Administration would immediately request the Canadian Government to enter into consultation at the earliest time to make suitable revisions to the rules of origin.

b. Scope of the Rules of Origin and Their Relationship to Other Origin Rules

(1) In General

The rules of origin in the Agreement will be applied to determine whether goods originate in one of the Parties and are thus eligible for preferential treatment, such as duty preference, accorded by the Agreement to goods originating in one of the Parties. These rules also apply to determine the scope of the rights and obligations of those provisions that specifically refer to "originating" goods, such as, provisions of Chapters Seven (Agriculture), Nine (Energy), and Eleven (Emergency Action).

For example, Article 704 of the Agreement on market access for meat uses the terms "meat goods originating in the territory of the Parties." Therefore, for the purposes of Article 704 and the Meat Import Act of 1979 as amended by legislation implementing the FTA, a meat product of Canada is determined using the Chapter Three rules of origin. This means that the anti-circumvention rule of Article 301(3)(c) and the safeguard against transshipment in Article 302 ensure that only meat goods originating in Canada will be eligible for exemption (but not necessarily exempted from) any quantitative restrictions on meat imports imposed under the Meat Import Act. Consequently, third countries will not be able to enjoy a "free ride" on benefits provided under the Agreement only for meat goods originating in Canada and the United States.

Except for provisions of the FTA that provide for preferential treatment for goods "originating" in one of the Parties, the rules of origin in Chapter Three are not required to be applied. When the FTA rules of origin are not applicable, origin may be

determined, when required, by such other means as the laws of each Party may provide. For example, the Chapter Three rules of origin do not apply for purposes of Article 407, dealing with import and export restrictions. This is because:

(i) Article 407 does not use the term goods "originating" in the territory of a Party, as set forth in Article 301 and in Chapter Three generally. This is the terminology that, pursuant to the general definitions in Chapter 2 of the FTA, invokes application of the Chapter Three rules of origin.

(ii) Article 407 affirms the Parties' GATT rights with respect to prohibitions or restrictions on bilateral trade in goods. The GATT does not include a precise rule of origin, although it does provide a forum for dispute settlement, which can include findings on the appropriateness of specific rules of origin.

(2) Cuban Sanctions Program

The Agreement will not affect the Cuban sanctions program. Pursuant to an Executive Order issued in 1963 under the authority of the Trading with the Enemy Act, the United States imposes a complete economic embargo and boycott on trade with Cuba. Regulations issued by the Treasury Department (31 C.F.R. Part 515) make it unlawful to import merchandise of Cuban origin, or merchandise that "is made or derived in whole or in part of any article that is the growth, product, or manufacture of Cuba." FTA rules or origin would not operate to override this prohibition. Paragraph three of Article 407 of the FTA provides that nothing in the FTA shall be construed to prevent a Party from imposing a restriction on the importation of products of a third country. Article 2003 provides, inter alia, that nothing in the FTA shall be construed to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests taken in time of war or other emergency in international relations.

(3) Steel

The FTA's stringent rules of origin effectively preclude the FTA benefits from being available and applied in such a way as to undermine the President's steel program announced in September 1985. It is notable in this regard that the American Iron and Steel Institute (AISI) was consulted extensively concerning the formulation of Section XV of the Rules to Annex 301.2, prescribing the transformations required for base metal products to meet the Chapter Three rules of origin. AISI supports the rule of origin for steel.

With regard to steel trade, the Omnibus Trade and Competitiveness Act of 1988 contains a provision (section 1322) under which any steel product manufactured in a country that is not party to a bilateral steel arrangement with the U.S., from steel

melted and poured in a country that is such a party (an "arrangement country"), may be treated as if it were a product of the arrangement country for purposes of quantitative restrictions.

The question has been posed whether there is necessarily any conflict between section 1322 (should it be enacted into law) and the FTA. The answer is no. Section 1322 provides discretionary authority to the President, and does not require any action on his part. Therefore, it can be construed consistently with the FTA. In determining whether to exercise such authority with respect to Canada, the President should pay attention, inter alia, to Canadian shipments of steel products made from imported semi-finished steel and of pipe and tube products fabricated from imported steel.

A second question posed is whether it makes any difference which bill is enacted first, the omnibus trade bill or legislation to implement the FTA. With respect to the consistency between section 1322 and the FTA, it makes no difference which is enacted later, since there is no necessary conflict between them.

Moreover, the FTA does not present any new legal impediment to the application of section 1322, should it be enacted into law. Article 407 of the FTA governing import and export restrictions merely affirms the Parties' existing GATT rights under Article XI. Therefore, the legal issue under the FTA is simply the same as the legal issue currently under the GATT: whether application of section 1322 is consistent with rights and obligations under the GATT.

If section 1322 were enacted and the President applied it so as to deny entry into the United States to steel products manufactured in Canada from steel melted and poured in an arrangement country, the Government of Canada could elect to pursue dispute settlement procedures either in the GATT under Article XXIII or under Chapter Eighteen of the FTA. In such a case, the United States Trade Representative would defend in the GATT or the FTA (whichever forum Canada chose) the actions of the President in this regard.

If the "melted and poured" provision were applied to a third country at a time when no restraints against Canada were in effect, then steel melted and poured in the third country would be charged to the restraint level of that third country even if the steel had been further processed in Canada prior to importation into the United States. The third country, however, would presumably have an economic interest in avoiding a situation where its quota was substantially filled by steel processed in Canada or other countries. Application of the melted and poured provision would thus be a disincentive to such operations. Any issue would arise with Canada, therefore, only in the unlikely event that the third country quota was filled and the United States was restricting steel imports that Canada felt were "Canadian" goods.

c. Administration Intent to Harmonize Rules of Origin

Because it is desirable that the origin of goods traded between the two Parties be determined in a uniform manner, the Administration intends to pursue, with the consent of the Government of Canada and the advice of interested parties in the United States, application of the rules of origin in the Agreement to origin determinations that are made for purposes other than determining whether goods are eligible for preferential treatment.

Chapter Four: Border Measures

A. Summary of FTA Provisions

1. Tariff Elimination

Article 401 provides for the elimination of both countries' tariffs in stages by January 1, 1998. Dutiable products in the Harmonized System are assigned to one of the following three staging categories: (1) immediate elimination; (2) five equal, annual cuts (20 percent per year); and (3) 10 equal, annual cuts (10 percent per year). Tariffs on certain telecommunication products are eliminated in three years. Article 401, paragraph five provides that tariffs can be reduced faster if the United States and Canada so agree.

2. Customs User Fee

Article 403 prohibits either party from introducing new customs user fees on imports from the other party and requires the United States to phase out customs user fees with respect to goods originating in the territory of Canada over three years, starting on January 1, 1990, with full elimination by January 1, 1994. This provision would allow the United States to revise its existing customs user fee to make it consistent with the GATT. The user fee phase-out is based upon a percentage of the user fee "otherwise applicable" on a particular date. Thus, if the level of the user fee applied to all countries should change from the present level, the rate applied to Canada would be based on the changed level. Similarly, if the United States were to revise the basis for collecting the fee, e.g., to substitute a transaction-based levy for an ad valorem levy, the rate applied to Canada would still be the applicable percentage of the rate applied to other countries.

3. Drawback

Article 404 ends duty drawback on exports between the United States and Canada as of January 1, 1994, with limited exceptions. These exceptions include goods exported in essentially the same condition on exportation as on importation, and dutiable goods originating in the United States or Canada if they are incorporated into, or directly consumed in the production of, goods subsequently exported back to the other FTA partner. This latter provision is transitional, since the duties to which it applies are scheduled to be phased out. Drawback would not be granted for antidumping or countervailing duties imposed on goods exported to Canada, unless the goods were exported in essentially the same condition as when imported. In addition, the parties may maintain drawback on imported citrus products and fabric imported from a third country and made into apparel that is subject to the most favored

nation tariff when exported to the other country. Moreover, the parties may agree to delay the termination of drawback for some or all goods beyond January 1, 1994.

Article 404 also provides that, subject to the same exceptions that apply to the elimination of drawback, goods withdrawn from a Foreign Trade Zone (FTZ) or benefiting from a similar program will be treated the same for tariff purposes whether destined for consumption in the United States or in Canada.

4. Waiver of Customs Duties

Article 405 prohibits either party from introducing after the later of June 30, 1988 or the date of approval of the Agreement by the Congress, any new duty waiver programs linked to performance requirements, extending the benefits of existing programs to new recipients, or expanding existing programs with respect to existing recipients. Such programs shall be terminated by January 1, 1998. This provision does not apply to waivers granted to manufacturers of automotive goods under the United States-Canada Auto Pact referred to in Chapter Ten. However, the parties retain their rights, including GATT rights, with respect to the Auto Pact.

Article 405 also provides that if duty waivers granted to designated persons for commercial purposes, regardless of whether the waivers are linked to performance requirements, have an adverse impact on the commercial interests of the other party, or a person of the other party, the party granting the waiver is to either cease to grant the waiver, or else make the waiver generally available to any importer.

5. Enforcement

Annex 406, "Customs Administration," authorizes the parties to require importers to submit a declaration of origin based upon a declaration of origin provided by the exporter. The Annex requires each party to make it unlawful for the exporter to provide a false certification of origin in the declaration. False declarations by either the importer or the exporter may be prosecuted by the government of the country in which the person making the offending declaration is located. This provision is intended to avoid fraudulent claims of FTA origin to avoid tariffs.

6. Import and Export Restrictions

Article 407 generally affirms GATT rights and obligations with respect to quantitative restrictions, but in addition, requires the elimination of certain specific quantitative restrictions, even if allowed under GATT exceptions. As set forth in Annex 407.5, the United States is to eliminate as of January 1, 1993, the embargo set out in 19 U.S.C. 1305 on the importation of lottery tickets and related materials that are printed in Canada for a U.S. lottery. Moreover, Article 407 makes it explicit that

both countries interpret the GATT to prohibit minimum export price requirements. In addition, Article 408 extends the GATT discipline to cover a prohibition on export taxes.

7. Other Export Measures

Article 409 affirms that while, as permitted under GATT Articles XI and XX, either country may restrict exports if so required in order to conserve resources or to deal with a short supply situation or domestic price control program, it nonetheless may do so only if the restriction does not: (1) reduce the proportion of total supply historically available to the other country; (2) impose a higher price on exports than for comparable domestic sales; or (3) disrupt the normal channels of supply or mix of products.

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

a. Proclamation Authority

Section 201(a) of the implementing bill grants the President authority to proclaim: (1) such modifications or continuance of any existing duty, (2) such continuance of existing duty-free or excise treatment, or (3) such additional duties, as the President may determine to be necessary or appropriate to carry out Articles 401 (including the schedule of duty reductions with respect to Canada set forth in annexes 401.2 and 401.7). The proclamation shall also contain a technical correction to provide that articles covered under subheading 9813.00.05 of Annex 401.2 shall be treated as being subject to otherwise applicable U.S. Customs duties if the articles or merchandise incorporating the articles are exported to Canada.

Section 201(b) of the implementing bill grants the President subject to consultation and lay-over requirements authority to proclaim: (1) such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the FTA; (2) such modifications or continuance of any existing duty; (3) such continuance of existing duty-free or excise treatment; or (4) such additional duties, as the President may determine to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada, as provided in the Agreement.

b. Plywood

Section 201(c) of the implementing bill encourages the President to develop with Canada common performance standards for the use of softwood plywood and other structural panels in construction applications in the United States and Canada. The President shall report to the Congress on the incorporation of common performance standards into building codes in the United

States and Canada and may implement the tariff reductions pursuant to Article 2008 of the Agreement when he determines that the necessary standards have been met. Any such tariff reductions shall be in equal increments, ending on January 1, 1998, unless those reductions commence after January 1, 1991. This subject is discussed further in connection with Chapter Twenty, below.

c. Customs User Fees

Section 203 of the implementing bill provides that any service for which an exemption from the customs user fees is provided under the Agreement may not be funded by money contained in the Customs User Fee Account. The Secretary of the Treasury shall reimburse the United States Customs Service for such costs out of the General Fund, subject to the availability of appropriations. This procedure avoids charging fees in excess of services rendered with respect to importations from third countries, which would be inconsistent with U.S. obligations under the GATT.

d. Drawback

Section 204(b)(1) of the implementing bill grants the President authority to proclaim those citrus products and textile products that will continue to receive drawback when exported from the United States to Canada. It is anticipated that the following products will be included: orange juice Harmonized System numbers 2009.11.0020-.0060, 2009.19.2000, 2009.19.4000; grapefruit juice numbers 2009.20.0000, 2009.20.2000, 2009.20.4000, 2009.20.4020, 2009.20.4040; imported fabric used in apparel goods listed in Harmonized System Chapters 61 and 62 that are cut and sewn in the territory of the United States or both the United States and Canada from fabric produced or obtained in a third country, and that meet other applicable conditions for preferred tariff treatment under the FTA, but exceed the duty-free limits of 10.5 million square yard equivalent (non-wool apparel) or 1.1 million square yard equivalent (wool apparel).

Section 204(b)(2) of the implementing bill gives the President authority to proclaim, following agreement with Canada, as contemplated in paragraphs seven and eight of Article 404, subject to consultation and lay-over, amendments to the above proclamation to add products or delay the January 1, 1994, effectiveness date for the elimination of drawback, with respect to any or all products.

Section 204(c) of the implementing bill also makes conforming amendments to the various provisions of current federal law that deal with bonded manufacturing warehouses, bonded smelting and refining warehouses, drawback, manipulation in warehouse, and foreign trade zones.

e. Enforcement

Consistent with Annex 406, section 205 of the implementing bill requires U.S. exporters who certify that goods exported to Canada meet FTA rules of origin to provide, upon request, a copy of the certification to a U.S. Customs official and imposes civil penalties of up to $10,000 for failure to provide a copy of the certification and subject to the same civil penalties provided for under section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) for a violation of section 592(a) of such Act by fraud, gross negligence or negligence, as the case may be, for falsely certifying that goods meet the FTA rule of origin. A penalty of up to $10,000 may also be imposed for failure to maintain records pertaining to exports to Canada.

The officers of the United States Customs Service are authorized to conduct outbound border searches and to take all necessary enforcement action in connection with suspected illegal exports of merchandise. The express statutory enforcement authority conferred upon the Customs Service by section 12 of the Export Administration Act of 1979, as amended, is in addition to the broad export search authority recognized by the courts. See United States v. Hernandez-Salazar, 813 F.2d 1126 (11th Cir. 1987); United States v. Udofot, 711 F.2d 831 (8th Cir. 1983); United States v. Ajlouny, 629 F.2d 830 (2d Cir. 1980); United States v. Swarovski, 557 F.2d 40 (2d Cir. 1977); United States v. Stanley, 545 F.2d 661 (9th Cir. 1976). To the extent the Customs Service has existing export enforcement authority, no additional statutory authority is deemed necessary to authorize export enforcement of the implementing bill by the Customs Service and no provision in the implementing bill is intended to limit or be in derogation of existing authority.

f. Lottery Ticket Embargo

Section 206 of the implementing bill makes a conforming change to 19 U.S.C. 1305 to eliminate the embargo on the importation of lottery tickets and related materials which are printed in Canada for a U.S. lottery, as required by paragraph two of Annex 407.6 of the Agreement.

2. Administrative Action

The U.S. Customs Service intends to issue regulations to implement the above-described legislative provisions, in particular, with respect to exporter and importer certification.

Chapter Five: National Treatment

A. Summary of FTA Provisions

Chapter Five establishes a general rule of non-discrimination with respect to goods. Article 501 achieves this result by making the GATT's "national treatment" obligation -- as set out in the current version of GATT Article III -- a substantive obligation under the FTA. Under the FTA, Canada and the United States will thus be required to treat products originating in the territory of the other party in a manner that is no less favorable than that accorded like products of domestic origin. For greater certainty of result, paragraph two specifies that the parties are to accord national treatment in a manner consistent with those interpretations of national treatment adopted by the GATT Contracting Parties prior to the time the FTA enters into effect.

Article 502 addresses the question of what "national treatment" requires with respect to measures adopted by the states or provinces and local governments. The article clarifies that such governments must accord to products originating in the other party treatment that is no less favorable than the best treatment accorded to like domestic products. Thus, for example, if a Canadian province were to give preferential treatment to goods produced in that province as compared to goods produced in other provinces, the province would be required to accord such preferential treatment to U.S.-origin products as well.

It should be noted that the national treatment obligation established in Chapter Five is subject to a number of exceptions and limitations set out in other chapters.

B. Action Required or Appropriate to Implement FTA

Because Chapter Five simply incorporates the existing GATT national treatment rule, it will require no change in U.S. statutes or administrative procedure.

Chapter Six: Technical Standards

A. Summary of FTA Provisions

Chapter Six builds upon current commitments of the United States and Canada under the GATT Agreement on Technical Barriers to Trade (Standards Code) to refrain from using measures related to technical standards in a discriminatory fashion. Article 603 requires that neither country maintain or introduce standards-related measures that would constitute an "unnecessary obstacle to trade" between the United States and Canada. Article 603 also specifically provides that measures whose demonstrable purpose is to achieve a legitimate domestic objective and that do not operate to exclude goods of the other party meeting that objective, do not create unnecessary obstacles to trade under the terms of Chapter Six. This clarification of the term "unnecessary obstacles to trade" is drawn from section 401 of the Trade Agreements Act of 1979 and provides a clearer definition of that term than is found in the Standards Code. Chapter Six also includes processes and production methods in its coverage of standards-related measures, a significant improvement over the Standards Code.

Unlike the Standards Code, Chapter Six applies only to non-agricultural goods. That is because technical standards related to agricultural products are covered in Chapter Seven. In addition, the provisions of Chapter Six do not place obligations on state, provincial or local governments. Article 607 does obligate both countries' federal governments, however, to exchange information, to the extent feasible, regarding standards-related measures of state governments and private standards organizations. Article 607 also obligates each party to provide the other with the full text of any proposed federal government standards-related measure, and requires that the party issuing the regulation provide persons of the other party with at least 60 days to comment on the proposed measure.

Under Article 605, neither the United States nor Canada may require that each other's testing facilities, inspection agencies or certification bodies be located or established, or make decisions, in its territory as a condition for accreditation. In addition, Article 605 requires each party to make provisions for the recognition of the accreditation systems for testing facilities, inspection agencies and certification bodies of the other party.

Article 606 requires that each country provide, upon request, a written explanation whenever it does not accept test results from testing bodies located in the other country, where those results are needed to obtain certification or product approval.

Finally, Article 608 requires that the parties undertake, as appropriate, additional negotiations on making their respective standards-related measures and product approval procedures compatible. That article also requires additional negotiations, where appropriate, on accreditation of each other's testing facilities and acceptance of test data from bodies located in each other's territory.

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

No changes in statute will be required to implement the provisions of Chapter Six.

2. Administrative Action

In order to meet the advance notice requirements specified under Article 607, the Administration intends to issue an executive order under the Administrative Procedure Act (APA) to provide for a minimum public comment period of 75 days whenever federal agencies propose any federal government standards-related regulations. Standards-related measures include technical specifications, technical regulations, and standards and rules for certification systems that apply to goods, and processes and production methods.

Federal agencies will continue to be bound by the provisions of Title IV of the Trade Agreements Act of 1979, which implements obligations of the Standards Code. As discussed above, Article 603 restates the language from that Act that directs federal agencies to ensure that their standards-related measures are not prepared, adopted or applied so as to create "unnecessary obstacles to trade."

When a request is received from Canada to harmonize a specific federal standard, technical regulation, or product approval procedure, the appropriate federal agency will endeavor, if appropriate, to achieve that result with its Canadian counterpart agency. The United States is not obligated, however, to conform any of its standards-related measures to Canadian measures. Federal agencies will also be required to take reasonable steps to promote the harmonization of standards-related measures maintained or developed by private sector bodies with those Canadian measures.

The "National Voluntary Laboratory Accreditation Program" administered by the National Bureau of Standards (NBS) will provide for the recognition of the laboratory accreditation scheme administered by the Standards Council of Canada. In addition, the U.S. Trade Representative will coordinate the efforts of appropriate federal agencies to provide for the recognition by U.S. entities of additional Canadian laboratory accreditation schemes, and will coordinate U.S. efforts to have Canadian government bodies accredit U.S. laboratories.

By virtue of Article 605, federal agencies may not require that Canadian testing facilities, inspection agencies or certification bodies be located or established within the territory of the United States as a condition for accreditation.

Under Article 606, in response to requests received from Canada, federal agencies unable to accept Canadian test results will be required to provide written responses setting out the reasons why the test results were not acceptable.

The National Bureau of Standards (NBS) will provide its Canadian counterpart with the full texts of proposals for federal government standards, technical regulations and procedures for product approvals issued by federal agencies.

The Administration intends to avoid the establishment of new government offices by specifying the use of existing offices for compliance with Chapter Six's information exchange requirements. Thus, the NBS Office of Standards Code and Information, which currently serves as the U.S. repository of standards-related information under the Standards Code, will ensure the exchange of information required under Chapter Six. In order to carry out its responsibilities, the Administration intends to provide for sufficient funding and resource allocations for this office to collect information on the standards-related activities of state governments and major national private standards organizations, and provide its Canadian counterpart with:

-notifications about the standards-related activities of state governments that might significantly affect trade with Canada;

-full texts of proposed state government rules;

-information that would facilitate comments and discussion by interested Canadian firms and individuals on proposed state government rules; and

-notifications concerning the standards-related activities of major U.S. private sector bodies.

As is currently the case, this Office will work with the Technical Office of the Department of Agriculture to provide information to interested U.S. exporters. The Administration intends to keep paperwork as simple as possible, and the number of regulations as few as necessary, to implement the provisions of Chapter Six.

Under the coordination of the U.S. Trade Representative, federal agencies will participate in additional negotiations, as appropriate to:

-harmonize standards-related activities between U.S. and Canadian federal agencies;

-accredit U.S. and Canadian testing facilities, inspection agencies and certification bodies; and

-provide for acceptance of U.S. and Canadian test data.

Chapter Seven: Agriculture

A. Summary of FTA Provisions

1. Agricultural Subsidies

Under Article 701(1), the United States and Canada have agreed to work together through multilateral negotiations such as the Uruguay Round to achieve, on a global basis, the elimination of all subsidies which distort agricultural trade. This provision is consistent with the proposal for agricultural reform that the United States has tabled in the Uruguay Round negotiations.

Article 701(2) prohibits each country from introducing or maintaining export subsidies on agricultural goods exported to the territory of the other country.

Article 701(3) provides that neither country, nor any public entity that it establishes or maintains, shall sell agricultural goods in the other country at a cost below the acquisition price plus handling, storage, and other costs.

Article 701(4) requires each country to take the export interests of the other country into account in using export subsidies on agricultural goods to third countries.

As part of the commitments on agricultural subsidies, under Article 701(5), Canada agreed to exclude from the transport rates established under the Western Grain Transportation Act (WGTA) agricultural goods originating in Canada and shipped via west coast ports for consumption in the United States.

2. Special Provisions for Fresh Fruits and Vegetables

Article 702 provides that either country for the next twenty years, under certain conditions, may apply a temporary duty on designated fresh fruits and vegetables. However, the application of such a duty cannot cause the total duty on these products to exceed the lesser of the most-favored-nation (MFN) duty that was in effect for the corresponding season prior to the Agreement or the then current MFN duty.

3. Market Access for Agriculture

Article 703 provides that both countries will work together to improve access to each other's markets through the elimination or reduction of import barriers.

4. Market Access for Meat

Article 704 generally prohibits either country from imposing

quantitative import restrictions on the other's meat goods, with an exception to prevent the frustration of actions taken regarding meat imports from third countries should the other country fail to take equivalent action against third country meat imports.

5. Market Access for Grain and Grain Products

Under Article 705, Canada has agreed to remove its import permit requirements for the importation of U.S. wheat and wheat products, oats and oat products, or barley and barley products when the level of government support provided by the United States to the particular grain is less than or equal to the level of government support provided by Canada to that grain. Annex 705.4 sets forth the methodology for calculating each country's level of government support. This methodology was developed specifically for the Agreement.

In addition, under paragraph five of Article 705, the United States and Canada have reserved their rights to impose, consistent with the other provisions of the Agreement, quantitative restrictions or import fees on imports of certain specified Canadian grains or grain products, for purposes of restricting the importation of a grain or of a grain product due to its content of that grain, when imports of the particular grain increase significantly as a result of a substantial change in the U.S. or Canadian support programs for that grain. The specified grains are wheat, oats, barley, rye, corn, triticale or sorghum.

6. Market Access for Poultry and Eggs

Under Article 706, together with Annex 706, Canada has agreed that if Canada maintains import quotas on certain poultry, poultry products, eggs or egg products, then those quotas will not be below certain minimum global levels.

7. Market Access for Sugar-Containing Products

Under Article 707, the United States has agreed not to impose quantitative import restrictions or import fees on Canadian products containing 10 percent or less sugar by dry weight for the purpose of restricting the sugar content of such products.

8. Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods

Article 708, in combination with Annex 708.1, provides general principles and certain commitments regarding technical regulations and standards governing trade between the United States and Canada in agricultural, food, beverage and certain related goods. To further the implementation of Article 708 and the schedules in Annex 708.1, Article 708 provides for the establishment of eight working groups composed of representatives of both countries on the following subjects of agricultural trade: animal health; plant health, seeds and fertilizers; meat

and poultry inspection; dairy, fruit, vegetable and egg inspection; veterinary drugs and feeds; food, beverage and color additives and unavoidable contaminants; pesticides; packaging and labelling of agricultural, food, beverage and certain related goods for human consumption. [The FTA does not require the federal government to pre-empt state regulation in these areas.]

The article also provides for the establishment of a joint monitoring committee to monitor the progress of the various working groups to ensure the timely implementation of Article 708 and Annex 708.1. The joint monitoring committee will report the progress of the working groups to the Secretary of Agriculture for the United States, the Minister of Agriculture for Canada, such other Cabinet-level officers or Ministers as may be appropriate, and to the Commission established pursuant to Chapter Eighteen of the FTA.

9. Consultations

The countries have agreed in Article 709 that they will consult with each other on agricultural issues at least semi-annually and at such other times as they may agree.

10. International Obligations

Under Article 710, the two countries retain their respective rights and obligations with respect to agricultural, food, beverage and certain related goods under the GATT and agreements negotiated under the GATT, unless otherwise specifically provided for in Chapter Seven.

B. Administrative Action

1. Agricultural Subsidies

a. Implementing Bill

No legislative provisions are required or appropriate to carry out the provisions of Article 701.

b. Agency Regulations

No regulatory changes are contemplated to implement the provisions of Article 701.

c. Agency Procedure or Practice

Appropriate agencies will continue their work in the Uruguay Round of multilateral negotiations in concert with Canada toward the elimination of all subsidies that distort agricultural trade. The Department of Agriculture will monitor agricultural imports from Canada to ensure fulfillment of Canada's commitments under Article 701. This article will not require a change in the

administration of the Export Enhancement Program (EEP) to third countries. The United States currently takes into account the export interests of Canada when conducting the EEP for sales to third countries.

In connection with paragraph three of Article 701, the application of the term "acquisition price" in that paragraph to sales by public entities such as the Canadian Wheat Board (CWB) is not specifically delineated, although such sales are covered by that paragraph. Of particular concern is determining the "acquisition price" of wheat in the context of the initial payment and final payment system used by the CWB. Any manipulation of the pricing system by the CWB would be subject to review by the United States to ensure that Canada's obligations under paragraph three of Article 701 were not being circumvented.

Another area of current concern is determining the acquisition price of eggs in the context of any payment system of the Canadian government or public entities. The United States will monitor the Canadian sales price policy for eggs. Any manipulation of the pricing system for eggs by the Canadian government or public entities would be subject to review by the United States to ensure that Canada's obligations under paragraph three of Article 701 were not being circumvented.

In order to implement Article 701(3), the United States also intends to pursue consultations with Canada regarding the price setting policy of the CWB as it affects goods exported to the United States. These consultations will be directed toward establishing a method to determine the price at which the CWB is selling agricultural goods to the United States and the CWB's acquisition price for those goods. The ideal method would be a public price setting mechanism transparent to the U.S. Government, producers and processors.

The United States will review individual sales for export to the United States of agricultural commodities by the Canadian government and public entities, including necessary price, quantity, and quality information, to ensure compliance with Article 701(3).

In addition, another area of concern could be sales for export by Canadian public entities of agricultural goods such as eggs to private firms, where the private firm ships only a component of such goods to the United States. The Department of Agriculture will, pursuant to Article 701(3), monitor such sales to ensure that the sale price of the Canadian public entity would not be below cost.

2. Special Provisions for Fresh Fruits and Vegetables

a. Implementing Bill

Section ___ of the implementing bill authorizes the President, under certain circumstances, to impose a temporary duty on the

importation of certain fresh fruits or vegetables from Canada.

b. Agency Regulations

The Secretary of Agriculture will issue regulations to implement the provisions of section ___, primarily to define the various terms of the Agreement.

c. Agency Procedure or Practice

The Department of Agriculture will monitor the planted acreage in the United States of the designated fresh fruits and vegetables and, working with the United States Customs Service and the Bureau of the Census, will monitor the import price of the designated fresh fruits and vegetables as appropriate, to determine whether the conditions specified in Article 702 have occurred, including making a determination for each relevant working day as to whether the price condition of section ___ of the implementing bill has been met. The Department of Agriculture will also monitor the point of shipment price of the designated fresh fruits and vegetables as appropriate for purposes of determining whether any temporary duty in place would have to be eliminated under the provisions of Article 702. In general, the Secretary of Agriculture, in determining whether to recommend to the President the imposition of a temporary duty, will consult with the affected industry.

3. Market Access For Agriculture

a. Implementing Bill

No legislative provisions are required or appropriate to carry out the provisions of Article 703.

b. Agency Regulations

No regulatory changes are contemplated to implement the provisions of Article 703.

c. Agency Procedure or Practice

Under Article 703, the countries are required to work together to improve access to each other's markets through the elimination or reduction of import barriers, in order to facilitate trade in agricultural goods. As Article 102(e) stresses generally, this Agreement is a beginning rather than a conclusion. While the United States has succeeded in substantially liberalizing trade with Canada, the FTA does not eliminate all trade barriers. But with respect to any remaining trade barriers, the Agreement lays the foundation for further bilateral and multilateral cooperation to expand and enhance benefits under the Agreement.

Like several other chapters of the Agreement (e.g., Articles 608 on technical standards, 1307 on government procurement, 1405

on services, and 1907 on the subsidies working group), Article 703 underscores the relevance of the principles contained in Article 102(e) to the chapter on agriculture. While Chapter Seven is a very constructive and worthwhile beginning, it certainly is not a panacea for agricultural trade barriers.

For example, under Article 706 of the Agreement, the United States obtained a useful liberalization of existing Canadian import quotas on chickens, turkeys, eggs, and their products. The commercial benefits of this achievement are reflected, for example, by the support for the Agreement by the Agricultural Technical Advisory Committee for Trade in Poultry and Eggs. However, the United States has not yet succeeded in eliminating these quotas, which still restrict U.S. opportunities to sell poultry, eggs and their products in the Canadian market.

Consistent with both the letter and spirit of Article 703, the United States fully intends to use its mandate for further negotiations to seek to eliminate the remaining agricultural import barriers. In addition to the Uruguay Round negotiations, the United States intends to seek further liberalization with respect to agricultural import barriers as a high priority in our bilateral relationship with Canada. Particularly where an unfavorable imbalance in market opportunities remains after the Agreement enters into force (as with respect, for example, to Canada's quantitative restrictions on imports of poultry, eggs, and egg products), the United States will attach the greatest importance to attaining this objective.

4. Market Access for Meat

a. Implementing Bill

Section ___ of the implementing bill amends the Meat Import Act of 1979 (Section 2 of P.L. 88-482) to delete Canada from the calculation of the quantity of meat articles that may be imported without triggering an import quota under the Act; adjusts the minimum quota amount to reflect the removal of Canada from the calculation; and provides the President, under limited circumstances, the authority to impose import restrictions on Canadian meat articles. Section ___ provides that the rules of origin applicable to determining whether meat is a product of Canada for tariff treatment purposes will also apply for purposes of the Meat Import Act of 1979.

b. Agency Regulations

No regulatory changes are contemplated to implement the provisions of Article 704.

c. Agency Procedure or Practice

The Department of Agriculture will apply the provisions of Chapter Three including the anti-circumvention rule of Article

301(3)(c) and the transshipment rule of Article 302 when determining whether meat articles originate in Canada for purposes of Article 704. For purposes of determining under Article 704 whether imports of meat articles from Canada are frustrating actions taken against meat imports from third countries, the President will consider, for example, if imports of meat goods originating in Canada increased significantly as a result of displacement of those goods within the Canadian market by an increase of imports into Canada of third country meat goods.

5. Market Access for Grain and Grain Products

a. Implementing Bill

Section ___ of the implementing bill amends section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 6§2 (hereinafter "section 22"), to authorize the President to exempt products of Canada from section 22 import restrictions pursuant to paragraph five of Article 705.

b. Agency Regulations

No regulatory changes are contemplated to implement the provisions of Article 705.

c. Agency Procedure or Practice

Regarding the provisions of paragraph one of Article 705 that provide that, once the import permit requirements are removed for the particular grain, Canada may require imports from the U.S. of that grain to be accompanied by an end-use certificate, denatured if for feed use, or accompanied by a certificate issued by Agriculture Canada if for seed use, the United States intends to pursue consultations with Canada with the goal of avoiding the application of these requirements if at all possible. If these import requirements are imposed, the United States will monitor their implementation to ensure that end-use certificates are freely provided and that the requirements do not become an undue restriction on trade. In this regard, it is important to note that the United States has not waived any of its rights under the General Agreement on Tariffs and Trade respecting the application of these import requirements by Canada.

The implementation of paragraph four of Article 705 and Annex 705.4 will be accomplished by making changes in agency practice in order to collect and analyze data on U.S. and Canadian levels of government support in accordance with Annex 705.4. In addition, the Department of Agriculture will select representatives to the working group provided for in Annex 705.4. Among other things, this working group will assist in the refinement of the formulas outlined in Annex 705.4. The Department of Agriculture will report annually to the Congress the result of government support calculations and will inform Congress concerning any revisions to the formulas outlined in Annex 705.4.

Regarding paragraph five of Article 705, under current U.S. law, the provision under which quantitative restrictions or import fees would most likely be imposed is section 22. Accordingly, before any import restriction could be imposed on a particular grain or grain product pursuant to section 22, the President would first have to determine that the requirements of section 22 were met. That is, it would first be necessary to determine that the particular article was being, or was practically certain to be, imported under such conditions and in such quantities as would render or tend to render ineffective, or materially interfere with, a U.S. price support or stabilization program. Only after making this determination would the United States, under Article 705(5), look to see whether, in the case of Canada, imports of the particular article have increased significantly as a result of a substantial change in the support programs for the relevant grain in either the United States or Canada.

In determining whether a change in the support programs of the United States or Canada for one of the specified grains is a "substantial change" within the meaning of Article 705(5), the President would not determine that a change that has a material market impact is an insubstantial change simply because the change is a relatively minor change in policy. A minor change in policy can nonetheless be a substantial change in a program.

A broad universe of changes could be "substantial" within the meaning of Article 705(5). For example, under the right conditions both of the following instances could be considered to be a "substantial change" within the meaning of Article 705(5): (1) a change in the current Canadian policy regarding the distribution of permits to export grain into the United States such that private entities were freely granted permits regardless of market conditions, and (2) a change in the United States schedule of reductions in price support loan rates under which the loan rate for a crop were reduced three percent from the loan rate for the previous crop rather than being reduced five percent, as the market had anticipated.

The term "increase significantly" would not be read to require that imports of a grain or grain product from Canada must reach a particular portion of total U.S. demand for the particular grain or grain product. Similarly, the term "increase significantly" would not be read to require a particular level of imports in absolute terms. For example, a small increase in absolute terms of such imports could constitute a "significant" increase in such imports relative to previous levels of imports from Canada.

The phrase "as a result of" in Article 705(5) would not be read to require the absence of other factors that might contribute to a significant increase in imports, nor is it necessary for the "substantial change" in support programs to be the largest single contributing factor. Furthermore, there could be a delay between the time a substantial change occurred in the support program and

the resulting significant increase in imports, including where the significant increase in imports results from a substantial change to support programs occurring before the FTA enters into force.

6. Market Access for Sugar-Containing Products

a. Implementing Bill

Section ___ of the implementing bill amends section 22 to authorize the President to exempt products of Canada from section 22 import restrictions pursuant to Article 707.

b. Agency Regulations

No regulatory changes are contemplated to implement the provisions of Article 707.

c. Agency Procedure or Practice

No changes to agency procedure or practice are contemplated. Current import quotas on sugar containing products maintained for purposes of restricting the sugar content of such goods already exclude products containing 10 percent or less sugar by dry weight. The incentive to import a product because it contains world price sugar disappears at the ten percent sugar content level. This provision also will not affect current import quotas on other products that may contain sugar that are maintained for other purposes, such as those to restrict the dairy product content of such products.

7. Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods

A number of legislative, regulatory and agency procedure and practice changes will be needed to implement the provisions of Article 708 and, more particularly, the various schedules to Annex 708.1. The following discussion is organized in the order of those schedules.

SCHEDULE 1: Feeds

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 1. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

No regulatory changes are currently needed to implement the provisions of Schedule 1. However, some regulatory changes may

be needed in the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure or Practice

Pursuant to Schedule 1, the appropriate agencies, including the Department of Agriculture and the Food and Drug Administration, will work together with their Canadian counterparts to harmonize or to make equivalent both federal and state requirements concerning the content, manufacture, testing, adulteration, and labeling of feeds. With respect to state provisions regarding feeds, the appropriate agencies will work through the National Association of State Departments of Agriculture and the Association of American Feed Control Officials in the specified areas.

SCHEDULE 2: Fertilizers

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 2. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

No regulatory changes are currently needed to implement the provisions of Schedule 2. However, some regulatory changes may be needed in the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure or Practice

Schedule 2 lists the government requirements and exemptions from those requirements that both countries have agreed to work together to harmonize or to make equivalent with respect to the labeling, testing, and content of fertilizers and pesticides that are allowed in fertilizers. The implementation of this Schedule will be accomplished by the appropriate agencies, including the Department of Agriculture and the Environmental Protection Agency, working with their Canadian counterparts in the specified areas. With respect to state provisions regarding fertilizers, the appropriate agencies will work through the National Association of State Departments of Agriculture and the Association of American Plant Food Control Officials in the specified areas.

SCHEDULE 3: Seeds

a. Implementing Bill

Schedule 3 requires the removal of the origin-staining requirements for imported Canadian alfalfa and clover seeds. This will be accomplished by amending the Federal Seed Act (7

U.S.C. 1582(e)) in section ___ of the implementing bill.

b. Agency Regulations

In concert with the amendment to the Federal Seed Act, the Department of Agriculture will amend 7 C.F.R. Part 201.

c. Agency Procedure or Practice

This schedule also provides that both countries will work together to enable Canadian seed imported into the United States to be governed by uniform regulatory requirements, and will maintain mutual recognition of each other's seed variety certification and testing methods. These provisions will be implemented by the appropriate agencies working with their Canadian counterparts. With respect to state provisions regarding seeds, the appropriate agencies will work through the National Association of State Departments of Agriculture and the American Association of Seed Control Officials in the specified areas.

SCHEDULE 4: Animal Health

a. Implementing Bill

In order to implement this Schedule, section ___ of the implementing bill amends 19 U.S.C. §1306(a) to enable the Secretary of Agriculture to establish regulations that would allow the importation of ruminants and swine and the fresh, chilled and frozen meat from areas of Canada free of foot and mouth disease and rinderpest, even if other areas in Canada may have foot and mouth disease or rinderpest. No other legislative provisions are currently required or appropriate to carry out the provisions of Schedule 4. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation. Section ___ amends 21 U.S.C. §152 to enable the Secretary of Agriculture, when the conditions of Article 708(3) are met, to issue regulations that allow the entry into the United States of certain veterinary biologics without a permit issued by the Secretary.

b. Agency Regulations

The Department of Agriculture will not exercise the authority provided by the amendment to 19 U.S.C. §1306(a) to permit the importation from disease free areas of Canada until the agreement contemplated by Schedule 4 regarding foot and mouth disease and rinderpest is reached with Canada. Similarly, the Department of Agriculture will not exercise the authority provided by the amendment to 21 U.S.C. §152 until the Department has determined that the appropriate Canadian system is harmonized with or equivalent to that of the United States. No other regulatory changes are currently needed to implement the provisions of Schedule 4. However, some regulatory changes may be needed in

the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure and Practice

The Department of Agriculture will work with its Canadian counterparts toward harmonization or equivalence in the specified areas and to fulfill the other provisions of the Schedule.

SCHEDULE 5: Veterinary Drugs

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 5. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

No regulatory changes are currently needed to implement the provisions of Schedule 5. However, some regulatory changes may be needed in the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure and Practice

The appropriate agencies, including the Department of Agriculture and the Food and Drug Administration, will work with their Canadian counterparts in the specified areas.

SCHEDULE 6: Plant Health

a. Implementing Bill

Section ___ of the implementing bill amends 7 U.S.C. §150bb, 150cc, 154, 156, 158, and 2803 to enable the Secretary to permit Canadian imports based on Canadian inspections when such inspections are equivalent to U.S. inspections. No other legislative provisions are currently required or appropriate to carry out the provisions of Schedule 6. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

Department of Agriculture regulations will have to be amended to implement procedures to protect the health of plants in Canada where such plants are grown in Canada but not the United States. No other regulatory changes are currently needed to implement the provisions of Schedule 6. However, some regulatory changes may be needed in the future as agreement is reached on

harmonization or equivalence in the specified areas.

c. Agency Procedure and Practice

The Department of Agriculture will work with its Canadian counterparts in the specified areas.

SCHEDULE 7: Pesticides

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 7. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

No regulatory changes are currently needed to implement the provisions of Schedule 7. However, some regulatory changes may be needed in the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure and Practice

The appropriate agencies, including the Department of Agriculture, the Environmental Protection Agency and the Food and Drug Administration, will work with their Canadian counterparts in the specified areas.

SCHEDULE 8: Food, Beverage, and Color Additives

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 8. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

No regulatory changes are currently needed to implement the provisions of Schedule 8. However, some regulatory changes may be needed in the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure or Practice

The appropriate agencies, including the Food and Drug Administration, will work with their Canadian counterparts in the specified areas.

SCHEDULE 9: Packaging and Labelling of Agricultural, Food, Beverage and Certain Related Goods for Human Consumption

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 9. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

The Department of Health and Human Services, Food and Drug Administration regulations will be amended to reflect the fact that "canola oil," as well as "low erucic acid rapeseed oil," are common and usual names of the oil that is extracted from canola seed and that such oil contains less than two percent erucic acid.

c. Agency Procedure or Practice

The appropriate agencies, including the Food and Drug Administration, will work with their Canadian counterparts in the specified areas.

SCHEDULE 10: Meat, Poultry, and Egg Inspection

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 10. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

No regulatory changes are currently needed to implement the provisions of Schedule 10. However, some regulatory changes may be needed in the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure or Practice

The Department of Agriculture will work with its Canadian counterparts in the specified areas.

SCHEDULE 11: Dairy, Fruit, and Vegetable Inspection

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 11. Any future agreement

that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

No regulatory changes are currently needed to implement the provisions of Schedule 11. However, some regulatory changes may be needed in the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure or Practice

The Department of Agriculture will work with its Canadian counterparts in the specified areas.

SCHEDULE 12: Unavoidable Contaminants in Foods and Beverages

a. Implementing Bill

No legislative provisions are currently required or appropriate to carry out the provisions of Schedule 12. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

b. Agency Regulations

No regulatory changes are currently needed to implement the provisions of Schedule 12. However, some regulatory changes may be needed in the future as agreement is reached on harmonization or equivalence in the specified areas.

c. Agency Procedure or Practice

The appropriate agencies, including the Food and Drug Administration, will work with their Canadian counterparts in the specified areas.

WORKING GROUPS

It is currently anticipated that a representative of the Foreign Agricultural Service, United States Department of Agriculture, will be a member of each of the working groups established pursuant to Article 708. In addition, it is anticipated that the other U.S. members of the working groups will be comprised of technical experts and representatives of other appropriate federal agencies. These working groups will encourage participation from representatives of state departments of agriculture, other associations responsible for standards and regulations, [the public] and interested groups in the private sector. [All significant changes in regulatory schemes proposed by the Food and Drug Administration and the Environmental Protection Agency under the authority of the Federal Food, Drug and Cosmetic Act

resulting from the activities of the working groups, including interpretative rules and general statements of policy, will be made using notice and comment procedures such as those provided for in the Administrative Procedure Act.]

8. Consultations

a. Implementing Bill

No legislative provisions are required or appropriate to carry out the provisions of Article 709.

b. Agency Regulations

No regulatory changes are needed to implement the provisions of Article 709.

c. Agency Procedure or Practice

It is anticipated that the consultations will be conducted on behalf of the United States by the Secretary of Agriculture or the Secretary's designee.

Chapter Eight: Wine and Distilled Spirits

A. Summary of FTA Provisions

Chapter Eight of the FTA sets out each party's obligations with respect to its treatment of wine and distilled spirits produced in the territory of the other party. Articles 802 through 804 set out the Chapter's principal obligations. Article 801 serves as a residual provision, describing the extent to which the national treatment rule of Chapter Five applies with respect to measures not specifically addressed by the Chapter's three principal provisions.

Article 802 requires each party immediately to provide national treatment in its listing measures with respect to wine and spirits produced in the other party's territory. In addition, the Article sets out rules for ensuring that government-owned or -controlled distributors and outlets employ fair, transparent, and expeditious procedures based on normal commercial considerations in making decisions regarding which wines and spirits to list for sale. Paragraph two recognizes a limited exception to these rules and to national treatment in this area by "grandfathering" in place British Columbia's existing "automatic listing" procedures for small, estate wineries.

Article 803 recognizes that government-owned or -controlled wine and liquor distributors may in some instances incur higher costs in handling imported, as opposed to domestic, wine and spirits, and accordingly wish to pass those added costs along to consumers in the form of higher prices for imported products. Article 803 allows for such added charges, but only to the extent that they reflect differences in actual costs incurred in handling products from the two countries. Differential charges on wine that exceed any added cost of service for imports must be phased out by 1995, with half of such differentials to be eliminated by 1990. Price mark-ups for distilled spirits must be eliminated immediately upon the entry into force of the Agreement to the extent that they exceed the actual cost-of-service differential between domestic spirits and those imported from the other party.

Article 804 requires the parties to provide national treatment in their measures affecting the distribution of wine and distilled spirits from the other party. There are three limited exceptions to that rule. First, a party may require wineries or distilleries to limit on-premises sales to their own products. Second, Ontario and British Columbia may maintain existing laws and regulations requiring private wine store outlets to discriminate in favor of wine produced in those provinces. Third, Quebec may continue to require grocery stores located in that province to sell only wine bottled in Quebec. Canada is required to ensure,

however, that alternative outlets are provided in the province for the sale of U.S. wine bottled outside Quebec.

Article 805 requires Canada to end its practice of requiring that U.S.-produced spirits imported in bulk into Canada be blended with Canadian spirits. The provision is, in effect, a rearticulation of Article III, paragraph 5, of the GATT as applied to blending requirements for distilled spirits. Article 806 is ensures that only authentic "Bourbon" and "Canadian" whiskeys will be sold as such in the two countries. Article 807 makes clear that the parties do not intend the FTA to affect GATT rights or obligations they have with respect to each other concerning wine and distilled spirits.

B. Action Required or Appropriate to Implement FTA

No legislative or regulatory changes will be required to implement the provisions of Chapter Eight at the federal level. With respect to state law and practice, it should be observed that the most important principle established by the Chapter is that of non-discrimination based on product origin. Chapter Eight does not impair the ability of the states to decide whether, when, or where wine and spirits are to be sold or distributed. Thus, for example, states will remain entirely free to require that alcoholic beverages be sold exclusively through state-run outlets or to decide that such products may be sold by private merchants, or to prohibit the sale of wine or distilled spirits entirely.

By virtue of Article 802, a few states that sell alcoholic beverages through state-owned outlets may have to make limited technical adjustments in their listing procedures to provide, for example, for written decisions of listing decisions and for an administrative appeal procedure. The Administration intends to work closely with appropriate agencies in those states whose laws or practices may be affected by this Article in order to assist them with the implementation of this provision.

Chapter Ten: Trade in Automotive Goods

A. Summary of FTA Provisions

1. Auto Pact

Under paragraph four of Article 405, except as provided elsewhere in the FTA, the Agreement does not apply to the granting of waivers of otherwise applicable customs duties under the Agreement Concerning Automotive Products between the Government of Canada and the Government of the United States of America that entered into force definitively on September 16, 1966 (the "Auto Pact"). The parties retain their rights under all other agreements other than the FTA with respect to the granting of such waivers, however. Thus, each party retains its GATT rights with respect to the Auto Pact, and retains its rights under the Auto Pact as well.

Under Article 1001, each party is to endeavor to administer the Auto Pact in the best interests of employment and production in both countries. This provision does not impose a new substantive requirement, but restates the intent of both parties to administer the Auto Pact for mutual benefit.

Article 1002 prohibits Canada from granting Auto Pact or pact-like benefits to any company not listed in Part One of Annex 1002.1. A footnote to that Annex prevents circumvention of the provision through the acquisition of a listed company by a motor vehicle manufacturer not listed in Part One of the Annex.

2. Export-Based Duty Waivers

Paragraph one of Article 1002 prohibits Canada from granting export-based duty waivers to any companies other than those listed in Part Two of Annex 1002.1. Paragraph two provides that after January 1, 1989, exports to the United States will be excluded in calculating the duty waived and that all export based duty waivers will terminate on or before January 1, 1998.

3. Production-Based Duty Waivers

Paragraph three of Article 1002 prohibits Canada from granting production-based duty waivers to any companies other than those listed in Part Three of Annex 1002.1. Paragraph three provides that such duty waivers shall terminate not later than January 1, 1996, or such earlier date specified in existing agreements between Canada and the recipient of the waiver.

4. Waivers to Designated Firms

Paragraph four is an analogue to Paragraph three of Article 405, and provides that whenever the other party can show that duty

waivers granted with respect to automotive goods by the other party to a designated person has an adverse effect on the commercial interests of the other party or of a person of the other party, the party granting the waiver shall either cease to grant it or else make it generally available to any importer. This provision applies equally to performance-based and non-performance-based duty waivers, but does not apply to the Auto Pact or to the export-based or production-based waiver programs, so long as such waivers are conditioned upon the fulfillment of performance requirements set forth in paragraphs two and three.

5. Import Restrictions

Article 1003 provides for the phase-out over five years of Canadian restrictions on the importation of used automobiles.

6. Select Panel

Article 1004 recognizes the importance of automotive trade and production for the economies of the United States and Canada and provides for the creation of a select panel by the United States and Canada to assess the state of the North American automotive industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets. The article also provides for cooperation by the two parties in the Uruguay Round to create new export opportunities for North American automotive goods.

7. Relationship to Other Chapters

Article 1005 provides that the FTA rule of origin applies to all automotive goods imported into the United States from Canada and automotive goods imported into Canada from the United States under the FTA. Automotive goods imported into Canada under the Auto Pact must continue to meet Canadian rules governing Auto Pact trade.

In determining whether a vehicle originates in the territory of either party or both parties, under the rule of origin set forth in Chapter Three of the FTA, instead of a calculation based on each vehicle, a manufacturer may elect to average its calculation over a 12-month period on the same class of vehicle or sister vehicle assembled in the same plant.

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

Because the United States does not have duty waiver programs that would be subject to Chapter Ten, it will not have to alter its own practices to implement the chapter. However, the Administration will take certain actions to ensure that the FTA operates to improve the competitiveness of the North American automotive

industry and to ensure that Canada does not maintain programs inconsistent with its international obligations.

a. Rule of Origin

The rules of origin for automotive goods are set forth in paragraph four of Section XVII of Annex 301.2, which will be enacted as part of the implementing bill. These rules presently require U.S. and Canadian content of an automotive product of at 50 percent in order to qualify for FTA tariff treatment.

Section 304(4) of the implementing bill authorizes the President to enter into negotiations to conclude an agreement with the Government of Canada to increase the U.S. and Canadian content of automotive products to a percentage higher than 50 percent but not higher than 60 percent in order to qualify for FTA tariff treatment. The President shall seek to obtain such agreement by no later than January 1, 1990. Upon the conclusion of an agreement with the Government of Canada to increase the standard of preference, the President shall have the authority to proclaim such amendment to the rules of origin.

b. Averaging of Content

Section - of the implementing bill directs the Secretary of the Treasury to issue regulations to implement paragraph two of Article 1005, concerning the averaging over 12 months of the calculation of U.S. and/or Canadian content of vehicles imported into the United States from Canada.

c. Exercise of GATT Rights

Section 207 of the implementing bill requires the United States Trade Representative to:

(1) undertake a study to determine whether the production-based duty remission program of Canada is inconsistent with the provisions of, or otherwise denies the benefits to the United States under, the GATT; and

(2) determine whether to initiate an investigation under section 302(c) of the Trade Act of 1974 with respect to such production-based duty remission program.

The Trade Representative shall submit a report to Congress no later than June 30, 1989 (or not later than September 30, 1989, if the Trade Representative considers an extension to be necessary) containing the results of the study under paragraph (1) and the determination under paragraph (2) and the reasons therefor.

2. Administrative Action

a. Select Panel

Article 1004 of the Agreement provides for the establishment of a select panel of informed persons to assess the state of the North American auto industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets. Because the details concerning the establishment and operation of such panel must be negotiated with the Government of Canada, it would be inappropriate and impractical to try unilaterally to dictate such parameters in the legislation implementing the Agreement.

The Administration is mindful of and shares the views of many Members of Congress, however, that in such negotiations, the United States should seek to accomplish the following principal objectives.

First, the two governments should agree on a schedule for the establishment and operations of the panel, with a view to facilitating the expeditious accomplishment of its task -- the recommendation of public policy measures and private initiatives to improve the competitiveness of the North American auto industry in domestic and foreign markets. In general, the Administration will seek to ensure that these overall results can be achieved by June 30, 1990. In particular, the Administration will seek to ensure that the select panel is able to formulate by June 30, 1989, its proposals and recommendations regarding an increase to 60 percent of the rule of origin established in Chapter Three and applicable to bilateral trade in automotive goods under Article 1005(1). The Administration will also seek to ensure that the select panel reports by June 30, 1990, on trade-distorting policies and practices maintained by either party that affect bilateral trade in automotive goods, and the rationale for maintaining such policies and practices. The Administration will seek to ensure that the select panel reports on this issue even if the select panel fails to reach a consensus position on the issue.

Second, the Administration will seek to ensure that the panel is composed of "informed persons" who can reasonably be expected to reflect and represent relevant interests. For example, it would be useful for the panel to represent the viewpoints of automobile producers, automotive parts producers with and without manufacturing and export experience in Canada, automotive workers, relevant trade associations, an academic with expertise in automotive issues, and consumers. However, the composition of the panel must be negotiated with Canada, bearing in mind the desirability of an efficient and effective number of participants as well as broad representation.

Third, the Administration will seek to ensure that the panel reviews any issue the United States considers relevant and helpful to the select panel's mission. While the Administration has not yet reached any definitive decisions on this matter (and in any event, must negotiate these terms with the Government of Canada), the Administration believes the following issues to be relevant to the objectives of the panel:

the use of state and provincial subsidies in the U.S. and Canada and their impact on the automotive industry;

the effect of Canada's use of production-based duty remissions, and the continued use of Canadian export-based duty remissions for exports to third countries, on the ability of the U.S. to export automotive products;

strategies to increase North American automotive exports;consideration of a coordinated external automotive policy in response to the North American automotive deficit in trade with the rest of the world;

the economic impact of foreign transplant operations, with particular emphasis on employment patterns, including possible job dislocation;

the effect of Canadian Auto Pact safeguards on plant location and employment in the United States and Canada;

coordination of automotive trade statistics to expedite their availability;

customer satisfaction with domestic and foreign-origin or transplant cars and service;

automotive polices in the United States and Canada, relative to overcapacity in the industry; and

formal and informal barriers which auto producing countries other than the United States and Canada have established toward automobile imports, and impact of such barriers on diverting automobile imports into the United States and Canada.

Concerning the work of the select panel once established, the Administration will keep Congress informed, on a continuing basis, of the panel's progress and any significant developments. Moreover, the Office of U.S. Trade Representative will promptly transmit to the Congress, the proposals and recommendations of the panel and, as soon thereafter as possible, advise the Congress of the Administration's proposed action based on those proposals and recommendations, including any bill the President may submit to Congress.

Chapter Eleven: Emergency Action

A. Summary of FTA Provisions

The emergency action provisions of Chapter Eleven of the FTA establish a two-track system that allows a party to restrict access to its market if imports from the other party, or imports from all sources, are causing serious injury to a domestic industry.

The first of the two tracks, the "bilateral" track, is established under Article 1101. Under this track, if a good originating from a party is imported into the territory of the other party in such increased quantities, in absolute terms, as a result of the reduction or elimination of a duty provided for under the Agreement, and constitutes a substantial cause of serious injury, the importing party may take a bilateral safeguard action to provide relief to injured domestic industries and workers. Under a bilateral action a party may suspend further duty reductions provided for by the Agreement or reinstate the rate of duty to a level not to exceed the lesser of: (1) the MFN rate in effect at that time; or (2) the MFN rate in effect prior to the Agreement's taking effect. A bilateral action taken by a party may not exceed three years or be taken more than once during the 10 year transition period.

The second of the two tracks, the "global" track, is established under Article 1102. This track applies to situations in which a safeguard action is imposed against imports from all sources. Under this track, the parties retain their rights under Article XIX of the GATT to take such a global safeguard action against imported goods of the other party subject to certain conditions. A party is required to exclude imports of the other party from any global import relief action if imports from the other party are not substantial and contributing importantly to the serious injury, or threat of serious injury, to a domestic industry. For purposes of this track, imports in the range of five to ten percent would normally not be considered substantial. "Contributing importantly" means an important cause, but not necessarily the most important cause.

In the event that imports from the other party are initially excluded from an emergency action taken under the global track, such imports may subsequently be included in the import relief action if imports from that party surge during the pendency of the global import relief action. An action taken under the global track may not reduce imports from the other party below the trend of imports over a reasonable recent base period with allowance for growth.

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

[Pending resolution]

2. Administrative Action

No changes in regulations, practices, or procedures, other than those mandated specifically by the implementing bill, are contemplated.

Chapter Twelve: Exceptions for Trade in Goods

A. Summary of FTA Provisions

Chapter Twelve establishes a limited number of exceptions to FTA provisions on trade in goods. Article 1201 incorporates into the FTA the "general exceptions" provided in GATT Article XX. Subject to certain conditions, Article XX exempts from GATT obligations various measures, such as those necessary to protect public morals and health, and for the protection of intellectual property. The application under the FTA of three GATT exceptions -- those related to conservation of natural resources, exports of primary products when domestic prices are below world prices due to governmental stabilization programs, and products in short supply -- are conditioned on observance of Articles 409 and 904 of the Agreement, as discussed in connection with Chapters Four and Nine.

Article 1202 preserves as exceptions to FTA obligations with respect to treatment of goods, domestic legislation in the United States and Canada that is currently "grandfathered" under the GATT. Article 1203 enumerates other legislative and regulatory measures that are exempted from the FTA's obligations -- in particular, current U.S. and Canadian export restraints on logs, and export controls on unprocessed fish pursuant to particular statutes of various of Canada's Eastern provinces. By virtue of Article 1204, the parties will also not be required to conform their current laws and regulations regarding beer and other malt-containing beverages to the national treatment standard. The parties may not, however, worsen their treatment of such beverages if such current measures are renewed or amended, and must conform any new measures with regard to these beverages to the national treatment rule. Although the parties may not challenge under the Agreement those measures exempted from the FTA's requirements under Articles 1203 and 1204, each party has reserved in Article 1205 its right to contest such measures in the GATT.

B. Action Required or Appropriate to Implement FTA

Because it effectively removes certain federal and state measures from the purview of the FTA, no administrative action will be necessary to implement provisions of Chapter Twelve. [Action to enforce GATT rights with respect to certain Canadian restrictions on unprocessed fish -- pending resolution.]

Chapter Thirteen: Procurement

A. Summary of FTA Provisions

Under Chapter Thirteen, the United States and Canada have agreed to a further elimination of government procurement-related trade restrictions beyond that required by the GATT Government Procurement Code, to which the United States and Canada are parties. That Code provides for a waiver of "buy national" restrictions on a reciprocal basis for a broad range of purchases by certain designated federal agencies in each country. Chapter Thirteen of the FTA lowers, on a bilateral basis, the threshold for application of the Code from 130,000 SDRs (about $156,000 in 1988) to $25,000 for otherwise Code-covered purchases by the same agencies.

In addition, Chapter Thirteen provides for increased transparency in the procurement process. Article 1305 requires that an award be based solely on the bid that best meets the requirements specified in the tender documentation. For example, if offsets (i.e., extraneous benefits that the bidding company will provide to the procuring country) are to be a consideration in making an award, Article 1305 requires that they be clearly specified in advance in the tender documentation.

Under Article 1305, the national security exception in the GATT Government Procurement Code will apply to procurements covered by Chapter Thirteen. Article 1307 requires the parties to undertake bilateral negotiations with a view to expanding the provisions of Chapter Thirteen within one year after the conclusions of the existing multilateral renegotiations currently in progress under Article IX:6(b) of the Government Procurement Code.

Annex 1305.3 requires each party to maintain a system of bid protests for individual bidders. Adjudication of a bid protest must be made by a reviewing authority with no substantial interest in the outcome of the procurement. The reviewing authority must have the power to delay the proposed award pending resolution of the bid challenge except where a delay would be prejudicial to the public interest. The reviewing authority is responsible for determining the appropriate remedy for the challenge, which may include reevaluating offers, recompeting the contract (i.e., reinitiating the procurement), or terminating the contract. The reviewing authority must be authorized to make recommendations in writing to contracting authorities concerning all aspects of the procurement process. All bid challenge procedures must be specified in writing and made available to all potential suppliers. The current U.S. practice, including GAO/GSA bid protest systems, fully satisfies the requirements of Chapter Thirteen. Canada, however, does not currently have a bid protest mechanism and is required to institute one.

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

Section 306 of the implementing bill authorizes the President to waive "Buy America" procurement restrictions with respect to Canada for all purchases subject to Chapter Thirteen, i.e., products and incidental services of Canada of a contract value of at least $25,000 where the procurement is otherwise covered by the GATT Government Procurement Code.

2. Administrative Action

Using the authority provided under section 306 of the implementing bill, the President will waive laws, regulations and practices as necessary to comply with Chapter Thirteen. Agencies will be instructed to modify their regulations accordingly. Section 25 of the Federal Acquisition Regulations will be amended to provide for waiver of the Buy America Act (41 U.S.C. 10) for purchases subject to Chapter Thirteen.

The waiver authority provided under section 306 is strictly limited to purchases covered by Chapter Thirteen. It can not be used to waive restrictions that are not subject to the Chapter, such as the following:

Small Business and Minority Business Programs -- Set-asides, that is, purchases reserved for small and minority businesses, are excluded from Chapter Thirteen's coverage.

"Berry Amendment" Types of Restrictions on the Department of Defense (Department of Defense Appropriations Act, P.L. 95-457) -- The Berry Amendment and similar restrictions will continue to apply, requiring DOD to purchase solely from U.S. sources textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses (P.L. 90-500, sec. 404), ships, and components thereof (Byrnes-Tollefson Amendment to DOD Appropriations Act).

Hand Tools (GSA Appropriations Act) -- the fifty percent differential in favor of domestic suppliers for all procurements of hand tools will not be affected because federal entities that purchase such tools are not covered under Chapter Thirteen.

Prison and Blind-Made Goods (18 U.S.C. 4124 and 41 U.S.C. 48) -- these goods are an exception to Chapter Thirteen's coverage.

Cargo Transportation Preferences (10 U.S.C. 2631, 46 U.S.C. 1241(B)(1), International Air Transportation Fair Competitive Practices Act of 1974, P.S. 92-623) -- such preferences are specifically excluded by the United States as a service

"incidental" to a procurement.

Other areas of procurement not subject to Chapter Thirteen (and the GATT Government Procurement Code) include:

1. Construction contracts;

2. Service contracts (Chapter Thirteen does not apply to services other than those incidental to the purchases of goods where the value of such services does not exceed the value of the goods);

3. Purchases by U.S. agencies which are not subject to the Government Procurement Code (e.g., the Departments of Transportation and Energy, the Bureau of Reclamation, the Corps of Engineers, and the Tennessee Valley Authority);

4. Purchases by the Department of Agriculture for farm support and human feeding programs; and

5. Purchases by state and local governments.

The Administration will make a concerted effort to assist U.S. firms to take full advantage of the opportunities created by Chapter Thirteen with respect to Canadian procurement. These actions will include providing information to U.S. firms on the Canadian procurement market and forthcoming purchases as well as closely monitoring implementation of Chapter Thirteen.

Chapter Fourteen: Services

A. Summary of FTA Provisions

Chapter Fourteen of the Agreement establishes a discipline on bilateral trade in services between the United States and Canada. It guarantees the continuation of relatively open service markets currently existing in the two countries in over 150 services covered by the chapter.

The obligations of Chapter Fourteen apply only to those services listed in Annex 1408. Services not listed (such as transportation services) are not subject to those obligations. Further, the obligations with respect to these covered services are subject to a "grandfathering" of existing laws and related measures. This means that current federal, state, or local law or related measures are exempted from complying with the Agreement. The chapter does not require or have the effect of requiring the harmonization or standardization of U.S. and Canadian laws and related measures pertaining to services. These obligations are also subject to the national security exception in Article 2003. The chapter does not impose any obligations or confer any rights with respect to subsidies for or government procurement of services.

Article 1401 provides that the obligations of the chapter apply to measures relating to the provision of a service. These include, but are not limited to, those relating to the production, distribution, or sale of a service; establishing a commercial presence; or investing for the purpose of providing a service. Article 1401 also sets out the right of non-establishment through which service providers can provide services across the border of the other party without establishing a branch or other presence in that country.

Article 1402 requires that national treatment be accorded to service providers of both parties and applies to all new measures relating to the provision of a service enacted after the Agreement enters into force. In addition, a measure must not act as a disguised restriction on the trade in covered services even if national treatment is provided. State, provincial, and local governments must also accord national treatment under Article 1402 to any new measure they enact after the Agreement enters into force. This means that a state is to treat a Canadian service provider no less favorably than it treats its own citizens, subject to the allowance for differences in treatment described below.

Under the terms of Chapter Fourteen, national treatment does not mean that in every case exactly the same treatment must be given to U.S. and Canadian service providers. Different treatment may

be accorded under Article 1402 to a service provider of the other party for prudential, fiduciary, health and safety, or consumer interest reasons as long as the treatment is equivalent in effect to that accorded to domestic service providers.

Article 1402 also "grandfathers" all federal, state, and local measures existing at the time of the entry into force of the Agreement. This means that measures which do not currently accord national treatment need not be changed. Further, these measures may be modified in the future provided the modification does not make the measure more discriminatory.

Article 1403 requires that both countries base requirements for licenses and certification for service providers on competence and ability to provide a service and not unjustifiably restrain a service provider of the other party from obtaining a license or certification. Each party is to encourage mutual recognition of the other's licensing and certification requirements.

There are currently three sectoral annexes established under Article 1404, although future annexes may be negotiated later. The annexes are an integral part of the chapter. Under this Article, the principles of Chapter Fourteen apply to the chapter's annexes which, in turn, elaborate on those principles as they apply to architects, tourism, and telecommunications-network-based enhanced services and computer services. The annexes are described in detail below.

Article 1405 provides that Chapter Fourteen may be expanded in the future to apply to additional services. The parties may also agree to amend the chapter to increase disciplines. These amendments would be submitted under the terms of Article 2104 to the parties' respective domestic legal procedures in order to make them an integral part of the chapter. The Administration wishes to expand the coverage and disciplines of this chapter but would not agree to do so when it would be contrary to U.S. interests. During any future negotiations, consultations would be held with the appropriate Congressional and private sector advisory committees.

Article 1406 states that the benefits provided by Chapter Fourteen can be denied to a person of the other party if the service is being provided indirectly by a person of a country other than the United States or Canada. This is a safeguard to prevent the benefits of the chapter from being given to service providers other than those of the United States or Canada. (Of course, the Agreement provides no benefits to persons of a country other than the United States or Canada who provides a service directly to either party.)

Article 1407 provides that new taxation measures are not subject to the obligations of Chapter Fourteen but those measures cannot arbitrarily or unjustifiably discriminate between persons

of the parties or act as a disguised restriction on trade in covered services. However, any violation of this provision is subject to the nullification and impairment provisions provided in Article 2011.

Annex 1404(A), "Architects," establishes a procedure to develop and implement mutually acceptable professional standards and criteria for architects in one country to meet in order to practice their profession in the other country. Professional architectural organizations in both countries will work toward developing recommendations for mutually acceptable standards and criteria. If those recommendations are consistent with the principles of the chapter and acceptable to the parties, the parties will encourage state and provincial governments to adopt measures to implement such recommendations. A committee will be formed to review compliance by licensing authorities with any such changes made in state and provincial measures.

Tourism services cut across many service sectors. For that reason, Annex 1404(B), "Tourism," sets out a specific list of tourism services to clearly define which services fall under the discipline of the chapter and the annex. These include, among others, travel agency services, tourism-related services of a financial nature, and the issuance of travelers insurance. The annex benefits tourism service providers in several ways. The national treatment and other obligations of the chapter apply to providing a tourism service within either party, including providing those services to a resident of or visitor to the other party. Those obligations also apply to the appointment, maintenance, and commission of tour agents or representatives. If fees are charged tourists on their entry to or exit from a party, those fees must be assessed on a national treatment basis and must approximate the cost of the service provided by the government on the entry or exit of tourists. Also, no restrictions can be placed by a party on the value of tourism services its own residents or visitors can purchase unless the restrictions are established under International Monetary Fund rules for balance-of-payments purposes. These obligations will benefit tourists as well as tourism service providers. The parties will meet annually to try to eliminate barriers to and facilitate trade in tourism services.

Annex 1404(C), "Computer Services and Telecommunications-Network-Based Enhanced Services," obligates the parties to provide access to basic telecommunications transport services on a national treatment basis so firms from the other party can effectively provide computer and enhanced services. The annex preserves the existing access to the markets of the other party, although new regulatory measures are allowed as long as they are consistent with the national treatment and other obligations of the chapter. Finally, there is a monopoly provision which applies to existing, as well as future, basic telecommunications monopolies that compete in the provision of enhanced services. Under this provision, the parties must ensure that such monop-

olies do not engage in anticompetitive behavior in the enhanced services sector. This requires that safeguards be in place to prevent cross-subsidization, predatory conduct, and the discriminatory provision of access to basic telecommunications transport facilities or services as they may adversely affect service providers from the other party.

B. Action Required or Appropriate to Implement FTA

Due to the "grandfather" provision in Article 1402, Chapter Fourteen does not affect existing federal, state, or local laws or related measures. Therefore, no changes are required in laws, regulations, or other related measures in effect when the Agreement enters into force.

The Administration has consulted closely with the states concerning compliance with this Agreement. The Administration anticipates no problems in states complying for two reasons. First, no measure existing at the time the Agreement enters into force has to be changed to conform to the Agreement. Second, states generally do provide national treatment to foreign nationals and firms within the criteria of Article 1402 as discussed above. Consultations with the states will continue in order to assure that all involved understand the obligations of the Agreement when it goes into effect.

The Administration intends to negotiate actively in the future to eliminate disadvantages to U.S. service providers which remain in effect because of the "grandfather" provision and to eliminate other distortions in trade in services. The Administration will pursue these objectives only where there are sectors of interest to the United States and when it would be to the benefit of the United States to do so. During any such negotiations, the Administration will consult with Congress and the private sector.

Chapter Fifteen: Temporary Entry for Business Persons

A. Summary of FTA Provisions

The United States and Canada have agreed that as a part of the special trading relationship between them, it is desirable to facilitate temporary entry of business persons on a reciprocal basis and to establish transparent criteria and procedures for temporary entry, while maintaining necessary provisions to ensure border security and protect indigenous labor and permanent employment. Article 1506 defines the terms "business person" as a citizen of the United States or Canada who is engaged in the trade of goods or services or in investment activities and "temporary entry" as entry without the intent to establish permanent residence. As set forth in Article 1505, no provision of any other chapter of the FTA is to be construed as imposing obligations upon the United States or Canada with respect to their immigration measures.

In pursuance of these stated objectives, Article 1502 requires the United States and Canada to provide, in accordance with Annex 1502.1, for the temporary entry of business persons who are otherwise qualified for entry under applicable law relating to public health and safety and national security. Annex 1502.1 covers business visitors, traders and investors, professionals, and intra-company transferees. Article 1502 also requires the United States and Canada to publish their laws, regulations, and procedures relating to the provisions of Chapter Fifteen and to furnish explanatory materials; imposes a limit upon any fees for processing applications for temporary entry; provides for the two countries to exchange available data respecting the granting of temporary entry; and requires that the application and enforcement of measures governing the granting of temporary entry shall be accomplished expeditiously so as to avoid unduly impairing or delaying the conduct of trade in goods or services, or of investment activities, under the FTA.

As stated in Article 1503, the United States and Canada shall establish a procedure, which shall involve the participation of immigration officials, for consultation at least once a year respecting the implementation of Chapter Fifteen and the development of additional measures for facilitating temporary entry of business persons on a reciprocal basis, including amendments and additions to Annex 1502.1. Finally, Article 1504 provides that, subject to certain limitations, the United States or Canada may invoke the dispute settlement provisions of Chapter Eighteen with respect to any matter governed by Chapter Fifteen.

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

Most of Chapter Fifteen is consistent with existing provisions of the Immigration and Nationality Act (INA). Legislative action is required, however, to implement Part B (Traders and Investors) and Part C (Professionals) of Annex 1502.1. Part B makes a Canadian citizen eligible for temporary entry into the United States to carry on substantial trade in goods or services or to develop and direct investment operations if the citizen meets existing requirements for entry under section 101(a)(15)(E) of the INA. Part C facilitates admission procedures for a Canadian citizen seeking temporary entry into the United States to engage in business activities at a professional level.

Section 101(a)(15)(E) of the INA provides for the admission of treaty traders and investors as nonimmigrants if authorized pursuant to a treaty of commerce and navigation. The United States and Canada have never entered into such treaty arrangements. Since the FTA is not a treaty of commerce and navigation, legislative action is necessary to accord treaty trader and investor status to Canadian citizens eligible for temporary entry under the terms of Part B of Annex 1502.1. To that end, section __ of the bill permits a Canadian citizen to be considered classifiable as a nonimmigrant under section 101(a)(15)(E) of the INA and to apply for a nonimmigrant treaty trader/investor visa if entering solely for a purpose specified in Part B of Annex 1502.1, provided that any such purpose shall have been specified in the Annex as of the date of the FTA's entry into force.

The bill does not amend section 101(a)(15)(E). Precedent for this approach is found in the Act of June 18, 1954 (68 Stat. 264, 8 U.S.C. 1184a), which accords treaty trader and treaty investor status to nationals of the Philippines upon a basis of reciprocity secured by agreement entered into between the President of the United States and the President of the Philippines. The Immigration and Naturalization Service and the Department of State are satisfied that existing law governing treaty traders and investors covers trade in services as well as trade in goods, and section __ expressly covers trade in both goods and services by incorporating the provisions of Part B of Annex 1502.1.

Section ___ of the bill amends section 214 of the INA by adding a new subsection (e) to permit the Attorney General, after consultation with the Secretaries of State and Labor, to promulgate regulations providing for the temporary entry of Canadian citizens under and in pursuance of the provisions of Chapter Fifteen to engage in business activities at a professional level. This authority is required for implementation of the provisions of Part C of Annex 1502.1, which streamline admission procedures for members of certain generally recognized professions, such as engineers, architects, and scientists, as well as new professions, such as

management consultants, who seek temporary entry into the United States to engage in business activities related to their professions.

Section 214(e) creates a separate and distinct category of admission; admissibility under its provisions does not imply qualification for admission under any other classification in the INA. Most of the professionals listed in Schedule 2 of Annex 1502.1, however, are currently eligible for admission into the United States under section 101(a)(15)(H)(i) of the INA and are subject to the petition requirements of section 214(c) of the INA. Section ___ of the bill, which enacts new section 214(e), makes no changes to section 101(a)(15)(H) or to section 214(c) but authorizes the Attorney General to give effect to paragraph 7 of Part C of Annex 1502.1, which eliminates prior approval procedures, petitions, labor certification tests, or other procedures of similar effect for persons listed on Schedule 2.

2. Administrative Action

The Secretary of State and the Attorney General have principal responsibility for administration and enforcement of the INA. The legislative changes described above will permit the Department of State and the Immigration and Naturalization Service to implement the provisions of Chapter Fifteen through appropriate administrative action. In most instances no significant changes to existing regulations, practices, and procedures will be required.

Paragraph one of Article 1502 requires the United States and Canada to provide for the temporary entry of business persons in accordance with Annex 1502.1, subject to applicable law relating to public health and safety and national security. The Annex makes provisions for business visitors (section 101(a)(15)(B) of the INA), traders and investors (section 101(a)(15)(E) of the INA), professionals (section 214(e) of the INA), and intracompany transferees (section 101(a)(15)(L) of the INA), and does not affect other nonimmigrant or immigrant classifications in the INA. The Annex will be implemented as follows:

a. Business Visitors

A business person seeking temporary entry for purposes set forth in Schedule 1 of Annex 1502.1 who otherwise meets existing requirements (those in effect at the time of the FTA's entry into force) for entry under section 101(a)(15)(B) of the INA shall be admitted upon presentation of proof of Canadian citizenship and suitable documentation regarding purpose of entry. While Schedule 1 tracks existing law regarding nonimmigrant class B-1, Canadian citizens entering the United States to provide after-sales installation, repair, and maintenance services pursuant to warranty or service contract incidental to the sale of commercial or industrial equipment or machinery will additionally be authorized to service computer software and will be authorized to enter the United States at any time during the life of the warranty or service agreement rather than only during the first year following

purchase, as is the case under current practice. The after-sales service provision in Schedule 1 is consistent with the joint agreement of the parties in Bricklayers and Allied Craftsmen v. Meese, 616 F. Supp. 1387 (N.D. Cal. 1985); see 51 Fed. Reg. 44266 (1986), 52 Fed. Reg. 30329 (1987). Because business persons other than those listed in Schedule 1 may also be eligible for admission under section 101(a)(15)(B) of the INA, paragraph 2 of Part A of the Annex provides for their entry if they meet existing requirements under section 101(a)(15)(B). The Immigration and Naturalization Service will promulgate regulations incorporating the provisions of Part A of Annex 1502.1 and establishing the requirements for entry documentation. No administrative action is necessary to implement the provisions of paragraph 3 of Part A, since the United States does not require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect for persons admitted under this category.

b. Traders and Investors

A business person seeking temporary entry to carry on substantial trade in goods or services, in a capacity that is supervisory or executive or involves essential skills, principally between the United States and Canada, or to develop and direct the operations of an enterprise in which the business person has invested, or is actively in the process of investing, a substantial amount of capital, shall be admitted under section 101(a)(15)(E) of the INA if the business person meets existing requirements for visa issuance and for entry. The Immigration and Naturalization Service will promulgate regulations incorporating the provisions of Part B and establishing the requirements for entry documentation. The Department of State will amend its regulations governing visa issuance to require Canadian citizens seeking entry pursuant to Part B to obtain a visa. No administrative action is necessary to implement the provisions of paragraph 5 of Part B, since the United States does not require labor certification tests or other procedures of similar effect for persons admitted under this category.

c. Professionals

A business person seeking temporary entry to engage in business activities at a professional level shall be granted entry, for a period not to exceed one year, under regulations promulgated by the Attorney General pursuant to the authority set forth in section __ of the bill. The scope of coverage of Part C of the Annex is set forth in Schedule 2 and is described above in the discussion of section __. In general, a business person is required to have a baccalaureate degree for admission as a professional under section 214(e) of the INA. The Immigration and Naturalization Service will promulgate regulations incorporating the provisions of Part C and establishing the requirements for entry documentation. Section ___ of the bill authorizes the Attorney General to give effect to the provisions of paragraph 7

of Part C, which state that prior approval procedures, petitions, labor certification tests, or other procedures of similar effect shall not be required for entry.

d. Intra-Company Transferees

A business person seeking temporary entry as an intra-company transferee shall be granted entry if the business person meets existing requirements under section 101(a)(15)(L) of the INA. Part D makes no changes to existing law, and no administrative action will be required for its implementation.

Paragraph two of Article 1502 sets forth the obligation to publish laws, regulations and procedures relating to Chapter Fifteen and to provide explanatory information. The laws, regulations, and procedures under which the Department of State and the Immigration and Naturalization Service operate are public information. Explanatory information will be provided to the Government of Canada in accordance with this Article.

Paragraph three of Article 1502 states that any fees charged in connection with the processing of applications for temporary entry of business persons shall be limited in amount to the approximate cost of services related thereto. Any fees charged by the Immigration and Naturalization Service or the Department of State under this Chapter will be in conformity with its provisions. Any fees assessed for the issuance of visas by the Department of State under section 101(a)(15)(E) will also be based upon reciprocity as mandated by section 281 of the INA.

Data collected and maintained respecting the granting of temporary entry under Chapter Fifteen will be made available to the Government of Canada in accordance with paragraph four of Article 1502. The Immigration and Naturalization Service will collect data on the admission of business persons under section 214(e) of the INA that will reflect the specific category under Schedule 2 of Annex 1502.1 pursuant to which temporary entry has been granted. This information will be provided to the Congress in an annual report.

Procedures established pursuant to Article 1503 for consultation between the United States and Canada on matters relevant to this Chapter will be set out in regulations. Any amendment or addition to Annex 1502.1 or measure for the further facilitation of temporary entry will be developed through the consultation process under Article 1503, which will involve the participation of United States and Canadian immigration officials. The participation of the Immigration and Naturalization Service in Article 1503 consultations will be on the national headquarters level. The notice of proposed rulemaking published in the Federal Register prior to the adoption of final regulations to implement an amendment or addition to Annex 1502.1, or other immigration measure that may be agreed upon by the United States and Canada,

will provide for a public comment period of no less than 60 days. At the time of publication of notice in the Federal Register, the Judiciary Committee of each Congressional body will separately be notified of the proposed rulemaking.

Finally, the Department of State, the Department of Labor, and the Immigration and Naturalization Service will participate as appropriate in proceedings under Articles 1806 and 1807 involving disputes arising from matters related to Chapter Fifteen.

Chapter Sixteen: Investment

A. Summary of FTA Provisions

Chapter Sixteen sets out each party's obligations with respect to any measure of a party affecting investment within or into its territory by an investor of the other party. Article 1601 limits the application of the chapter so that it does not cover, inter alia, measures affecting financial services (with certain exceptions), government procurement or the provision of transportation services.

The chapter sets out basic obligations in respect of four key principles of an open investment regime: national treatment, the disciplining of performance requirements, expropriation only in conformity with international law, and free transfer of funds related to investments.

Article 1602 provides that each party is to accord national treatment to investors of the other party when investing, conducting or selling business enterprises. Neither party may impose local equity requirements or require an investor of the other party by reason of its nationality to sell an investment. National treatment is to be accorded on an "in-state" or "in-provincial" basis. Article 1602 sets out certain limited exceptions to national treatment for Canadian government ("Crown") corporations, which permit Canada under prescribed conditions to preclude or limit the sale of those government corporations to non-Canadians. The Article also has language similar to that in Chapter Fourteen (Services) that permits differential treatment in certain circumstances where necessary for prudential, fiduciary, health and safety, or consumer protection reasons.

Article 1603 sets out rules disciplining performance requirements. It prohibits a party from imposing certain performance requirements on investors of the other party as a condition for permitting an investment, or in connection with the regulation of business operations. The performance requirements thus prohibited include export requirements, import substitution requirements, and requirements that a business enterprise purchase from local suppliers, or accord a preference to local products, or achieve a level of local content. These same performance requirements are prohibited when imposed on investors of a third country, where meeting such a requirement could have a significant impact on trade between the two parties. The concept of "imposing" a requirement is defined broadly to include enforcement of an undertaking to perform one of the listed performance requirements.

Article 1604 permits a party to monitor investments by investors of the other party by requiring routine information for informational

and statistical purposes. That information (where confidential) is to be protected against disclosure which would prejudice the investor's competitive position.

Article 1605 provides that neither party shall directly or indirectly nationalize or expropriate an investment of the other party in its territory except in accordance with prescribed standards, which restate the rules of international law.

Article 1606 provides that neither party shall prevent an investor of the other party from transferring profits, royalties, sales proceeds and other remittances relating to its investment. Exceptions permit a party to prevent transfers under specified laws of general application, such as bankruptcy laws.

Article 1607 provides that existing measures are grandfathered from these obligations. Non-conforming measures need not be changed, but may be modified in the future so long as the modification does not increase the non-conformity. Any measure so modified cannot be amended later to increase its non-conformity at the time with the chapter.

An important exception to grandfathering is that Canada will take major measures to liberalize Investment Canada Act review of acquisitions by U.S. investors. Those measures are set out in Annex 1607.3, and provide, inter alia, that Canada in stages is to raise the threshold for reviewing direct acquisitions (to C$150 million in constant Canadian dollars), and to end the review of indirect acquisitions. Those measures, however, do not apply in respect of the oil and gas and uranium mining industries, which are subject to policies described in an exchange of letters.

Another important exception to grandfathering occurs if Canada requires the divestiture of a business enterprise in a cultural industry in connection with a review of an indirect acquisition of such an enterprise by a U.S. investor. In those circumstances Canada is obliged to offer to purchase that enterprise at fair open market value, as determined by an independent, impartial assessment.

Article 1608 provides some special rules for dispute settlement, e.g., that the parties are to make every attempt to assure that panelists chosen or selected under Article 1807 are experienced and competent in the field of international investment.

Article 1609 provides that, subject to Article 2011, the chapter is not to apply to any new taxation measure or any subsidy, provided that the tax measure or the subsidy does not constitute a means of arbitrary or unjustifiable discrimination between investors of the parties or a disguised restriction on the benefits accorded under the chapter. Article 1610 obliges the parties to endeavor in the Uruguay Round and other international fora to improve multilateral arrangements and agreements with respect to investment.

B. Action Required or Necessary to Implement FTA

Chapter Sixteen does not affect existing U.S. laws or other measures. Therefore, no legislative or regulatory changes are required to assure that U.S. law conforms to the FTA. Provisions of existing law that might otherwise raise questions of compliance with the FTA, such as the provisions of the Atomic Energy Act which prevent the issuance of licenses inter alia to foreign corporations, are "grandfathered" by Article 1607.

Chapter Seventeen: Financial Services

A. Summary of FTA Provisions

Chapter Seventeen covers federal measures relating to financial services provided by financial institutions in both countries. (Financial services offered by non-financial institutions and insurance services are covered in Chapter Fourteen (Services).) Chapter Seventeen contains a series of specific commitments by each party and a consultation mechanism for resolving disputes.

Under Chapter Seventeen, Canada has agreed to exempt U.S. commercial bank subsidiaries from the current restrictions on market share, asset growth, and capital expansion in the same manner that Canadian commercial banks are exempt from such restraints. Canada has also agreed to lift the current limitations on foreign ownership of federally-regulated financial institutions. Canada has agreed to use its review powers governing entry of U.S.-controlled financial institutions in a manner not inconsistent with the FTA.

The United States agreed to allow Canadian banks (as well as U.S. and other foreign banks) in the United States to deal in, underwrite and purchase debt obligations fully backed by Canada or its political subdivisions. The United States also agreed to guarantee the right of Canadian banks to retain their multi-state branches that were grandfathered under the International Banking Act (12 U.S.C. 3101). The United States agreed that amendments to the Glass-Steagall Act (12 U.S.C. 24 (Seventh)) would be applicable to Canadian financial institutions operating in the United States in the same way they would apply to U.S. financial institutions.

Each party agreed to accord existing rights and privileges to financial institutions of the other party established under its laws, provided that the other party meets its commitment to further liberalize its financial markets and to extend the benefits of such liberalization to financial institutions of the party. [Pending resolution: authority of banks to engage in insurance activities]

B. Action Required or Appropriate to Implement FTA

1. Implementing Bill

An amendment to U.S. law is necessary to implement the U.S. obligation to permit U.S., Canadian and other foreign banks to deal in, underwrite and purchase debt obligations fully backed by Canada or its political subdivisions.

Under present law, national banks, state member banks, U.S. branches and agencies of foreign banks, and bank holding companies and their affiliates are permitted to deal in, underwrite and purchase for their own accounts obligations of the United States and general obligations of the states and their political subdivisions.* This statutory language has been interpreted to permit national banks to deal in, underwrite and purchase obligations backed directly or indirectly by the full faith and credit of the United States, a state, or a political subdivision of a state.

The amendment would provide national banks, state member banks, U.S. branches and agencies of foreign banks, and bank holding companies and their affiliates with the authority to deal in, underwrite and purchase for their own accounts debt obligations that are backed to an equivalent degree by Canada, any of its provinces or any of their political subdivisions. These include: debt obligations of, or guaranteed by, Canada, its provinces or political subdivisions; debt obligations of agents of Canada, its provinces or political subdivisions, including debt obligations of Canadian Agent Crown Corporations, where the obligations are incurred in their capacity as agents for their principals and the principals are ultimately and unconditionally liable in respect of the obligations; and other debt obligations otherwise directly or indirectly backed by the equivalent of the full faith and credit of Canada or any of its provinces or any of their political subdivisions.

2. Administrative Action

The Comptroller of the Currency's Investment Securities Regulation (12 C.F.R. Part 1) will be amended to reflect the statutory change described above.

The other provisions of Chapter Seventeen can be implemented without any changes in existing law, regulation or practice.

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* National banks are permitted to engage in such activities under section 16 of the Banking Act of 1933 (12 U.S.C. 24 (Seventh)). state member banks and U.S. branches and agencies of foreign banks are granted such authority under the Federal Reserve Act (12 U.S.C. 335) and the International Banking Act (12 U.S.C. 3102(b) and 3105(c)(2)), respectively. Bank holding companies and their affiliates are permitted to engage in such activities under the Federal Reserve Board's Regulation Y (12 C.F.R. 225.25 (b)(16)).

Chapter Eighteen: Institutional Provisions

A. Summary of FTA Provisions

Under Article 1801, if disputes arise between the parties with respect to the interpretation or application of any portion of the FTA, the conflict resolution provisions of Chapter Eighteen apply. Those provisions also apply to complaints by either party that the other has taken, or is proposing to take, action resulting in a "nullification or impairment" of benefits that the complaining party reasonably expected to accrue to it under the Agreement. Chapter Eighteen does not apply to disputes arising under Chapter Seventeen (Financial Services), however, or under Chapter Nineteen, which sets out specific mechanisms for dispute resolution in antidumping and countervailing duty cases.

When a party considers that the other has taken action inconsistent with both the FTA and any of the various GATT agreements to which both the United States and Canada are parties, it is required to select either the FTA or the GATT as the exclusive basis upon which -- and forum in which -- to establish its complaint. Based upon that selection, the complaining party will proceed to dispute settlement under the procedural rules applicable in the relevant forum. In the case of a proceeding initiated under the FTA, the provisions of Chapter Eighteen would apply.

Article 1802 establishes a binational "Commission," headed by each party's cabinet official principally responsible for international trade, to oversee the implementation and further elaboration of the FTA and to resolve disputes arising under the Agreement. The Commission is empowered to fashion its own rules and procedures and may make a decision only where both sides agree with respect to the particular matter.

Article 1803 requires a party to notify the other in writing of any measure that the party may adopt that might "materially affect the operation of the Agreement." The provision of such notice is not to be construed to indicate that the measure in question is inconsistent with the FTA, however. Pursuant to Article 1804, the parties may consult with respect to any issue arising under the FTA, whether or not the matter has been the subject of consultations under Article 1803. Proprietary or confidential information exchanged during the course of such consultations is to be treated on the same basis as it was treated by the party providing the information.

If the parties cannot resolve a particular matter within 30 days after consultations have begun, either party may refer the issue to the Commission for resolution under the terms of Article 1805. Absent an agreement to the contrary, the Commission must

convene in 10 days to consider the matter. The Commission may draw upon experts or mediators to assist it in resolving the controversy.

If it can not resolve the dispute within 30 days, the Commission may decide to refer the matter to binding arbitration under the provisions of Article 1806. In the case of unresolved disputes regarding actions taken under Chapter Eleven, however, which governs safeguards measures, the Commission is required to make such a referral. Once an arbitral panel has found that a party's action is in conflict with the FTA, and absent an agreement between the parties on an appropriate settlement, the party must implement the finding or face retaliation in the form of the suspension by the injured party of equivalent FTA benefits.

Article 1807 sets out procedures governing the establishment and operation of panels of experts that, upon request of either party, are to hear those controversies that the Commission does not refer to binding arbitration. Panels are to be composed in each particular case of five independent experts drawn, whenever possible, from rosters maintained by each party. Two of the panelists will be selected by each party. A fifth panelist is to be chosen by lot from the parties' rosters whenever neither the Commission nor the four panelists are able to make such a choice.

Unless the Commission agrees otherwise, each panel will be free to establish its own rules of procedure and must base its decision on the arguments and decisions of the parties. In every case, a party is guaranteed at least one appearance before the panel and the right to make written submissions and to offer rebuttal arguments.

Within three months after the selection of its chairman, the panel is to present its preliminary report. That report will contain findings of fact and a determination concerning whether the measure at issue is inconsistent with a provision of the FTA or would cause a "nullification or impairment" of the benefits that a party could reasonably have anticipated under the Agreement. In addition, the panel is to include in its preliminary report any recommendations that it may have to resolve the dispute. Where feasible, the parties are to be provided an opportunity to comment on the preliminary report before it is made final. If the Commission so requested at the time the panel was established, the report will also contain the panel's views with respect to the adverse trade effect on the complaining party of any measure deemed to be inconsistent with the FTA.

A party is afforded 14 days in which to present written objections to the Commission and the panel with respect to any portion of the panel's preliminary report with which the party disagrees. Upon receipt of such objections, the panel may seek the further views of the parties and revise its report, which shall be issued in final form within 30 days following the issuance of

the preliminary version. Absent an objection by the Commission, the final report will be made public.

When the Commission receives the final report, it is required to resolve the dispute, normally in conformity with the panel's recommendation. Whenever possible, the Commission is to resolve the dispute by agreeing that the measure in controversy will be removed or, where the dispute involved a proposed measure, will not be implemented. When that remedy cannot be agreed upon, the Commission shall, where possible, agree upon compensation for the complaining party.

Unless it decides otherwise, the Commission must resolve the controversy within 30 days of receiving the panel's final report. Failing such resolution, the complaining party may suspend the application to the other party of benefits of equivalent effect to those that the complaining party considers were impaired, or may be impaired, as a result of the disputed measure. The suspension of benefits may remain in effect until the parties resolve the dispute.

Under Article 1808, the parties will endeavor to formulate a common interpretation of FTA provisions that come under scrutiny in either party's court or administrative proceedings in those instances in which either party wishes to make its views known to the court or administrative body, or where that body or court solicits a party's views on the subject. Any agreed interpretation is to be submitted by the party in whose territory the proceedings are being conducted, in accordance with the rules of the relevant forum. If the parties cannot reach agreement on the appropriate interpretation, either party may submit its separate views to the extent and in the manner prescribed for such interventions by the forum.

B. Action Required or Appropriate to Implement FTA

Only one change in U.S. law or administrative practice will be required to implement the provisions of Chapter Eighteen. Section 406 of the implementing bill provides appropriation authority for the payment of expenses generated by any binational dispute resolution panels that may be established under Article 1806 or 1807 of the FTA. Expenses would be generated, for example, in the payment of stipends to the independent experts who would comprise the panels, for secretarial services, travel and lodging for panelists, and so forth. The Government of Canada would be expected to bear one half of the costs generated by such binational panels. The parties will agree in advance on the nature and amount of expenses that panels would be permitted to incur.

Legislative authority currently exists for the Executive Branch fully to enforce United States rights under the dispute resolution procedures of the FTA. Section 301 of the Trade Act of 1974

authorizes the President to take "all appropriate and feasible action" to enforce U.S. rights under trade agreements such as the FTA. Once the FTA enters into force, an interested person may file a petition with the Unites States Trade Representative requesting section 301 action in any case in which the person considers that Canada has failed to honor a provision of the Agreement or has caused the nullification or impairment of benefits that the United States could reasonably have anticipated under the Agreement. Alternatively, the U.S. Trade Representative may, on his own initiative, institute a section 301 proceeding.

If the U.S. Trade Representative decides to initiate an investigation under section 301 with respect to an alleged Canadian breach of the FTA, whether on his own initiative or based on a petition from a private party, section 303(a) of the Trade Act requires him initially to attempt consultations with the Canadian Government to resolve the matter. Should such consultations fail, the matter must be submitted to the formal dispute resolution procedures of the Agreement. The U.S. Trade Representative will seek information and advice from the private sector, including from the petitioner, if any, in preparing U.S. presentations for consultations and formal dispute resolution procedures.

In the event that a panel report upholds a U.S. allegation that Canada has breached the Agreement or nullified or impaired U.S. benefits, and the Canada - United States Trade Commission refuses to adopt the report, section 301 provides the President with authority to take appropriate retaliatory action. That action may be taken directly by the President under section 301(d) without the necessity for an investigation under section 302.

Chapter Twenty: Other Provisions

A. Summary of FTA Provisions

Article 2001 makes clear that the FTA leaves unaffected the provisions of the 1980 tax convention between the United States and Canada. By virtue of Article 2002, the FTA also leaves the parties free, to the extent permitted by GATT Article XII, to impose import restrictions in order to safeguard their balance of payments positions. A party may also restrict payments and transfers and international capital movements in conformity with Article VIII of the International Monetary Fund and Article 7(c)-(e) of the 1961 OECD Capital Movements Code. The FTA prohibits such restrictions, however, if they are used for purposes of practicing arbitrary or unjustifiable discrimination against firms or individuals from the other party or amount to a disguised restriction on the benefits accruing to such persons, or to goods originating in the other party, under the FTA.

Article 2003 governs the extent to which a party may take action that would otherwise be inconsistent with the FTA in order to protect its essential security interests. The Article does not apply to actions related to trade in energy products or to measures related to government procurement, since the FTA chapters governing those subjects contain their own national security exceptions. Article 2003 tracks in major part Article XXI of the GATT, establishing a national security override that is essentially self-judging in nature. Article 2003 adds a provision not included in the GATT, however, allowing either party to take action to prevent the proliferation of nuclear weapons.

Under Article 2004, the parties are pledged to work together in the current GATT round and in other international fora to improve protection for intellectual property. One specific intellectual property right -- copyright of television programming -- is addressed in Article 2006. That Article provides that a U.S or Canadian copyright holder must receive "equitable remuneration" whenever a broadcast containing a program in which he holds a copyright is simultaneously retransmitted in unaltered form in an area outside that in which the broadcast can generally be received. The provision was designed to eliminate the unreimbursed retransmission, principally by Canadian cable companies, of U.S. television broadcast signals. The United States currently provides a right of equitable remuneration under a compulsory licensing royalty scheme established pursuant to the Copyright Act. The Article requires Canada to have fully operational by January 1, 1990 an equivalent system for granting remuneration to U.S. copyright holders.

Paragraphs two and three of Article 2006 clarify that other than in a limited set of circumstances, any unauthorized delay or

alteration in the retransmission of a television broadcast is to be treated as a copyright infringement. Paragraph 4 provides for the establishment, once Canada's equitable remuneration program is in place, of a joint advisory committee to consider outstanding retransmission issues.

Subject to a limited number of exceptions, paragraph one of Article 2005 removes "cultural industries" -- defined in Article 2012 as the print, film and video, music, radio, and television media -- from the provisions of the FTA. Also in Article 2005, notwithstanding any other provision of the Agreement, a party is expressly permitted to take measures of equivalent commercial effect in response to actions that would be inconsistent with the Agreement but for the general exemption for cultural industries.

Article 2007 eliminates a Canadian requirement that a magazine or newspaper must be printed in Canada in order for advertisers in that publication to deduct the cost of such advertisements for Canadian income tax purposes.

Article 2008 addresses the issue of the sale in Canada of U.S.-made construction grade plywood. Under the terms of that Article, and pursuant to an exchange of letters on the subject, the parties agreed that the Canada Mortgage and Housing Corporation (CMHC) would decide by March 15, 1988 whether to allow the use of U.S. "C-D grade" plywood in the construction of housing that it finances. In the event that the CMHC refused, the issue was to be referred to a panel of experts. If the panel disagrees with CMHC findings and evaluation on the subject, or if the panel is unable to reach a conclusion by January 1, 1989, the United States and Canada may delay the implementation of tariff cuts for plywood and associated products under the FTA pending resolution of the controversy.

Article 2009 makes clear that the FTA does not affect the operation of the 1986 "Memorandum of Understanding" terminating a U.S. countervailing duty case brought against Canadian softwood lumber. The Memorandum committed Canada to tax softwood lumber exports until Canadian provinces adjust certain stumpage fees.

Article 2010 governs the operation of governmentally-created or -regulated monopolies operating in markets for goods or services covered by the FTA. (Article 5 of Annex 1404.C establishes similar, specific obligations for regulated monopolies operating in the computer services and network-based enhanced telecommunications markets.) Paragraph one establishes that a party may freely maintain an existing monopoly, or designate a new one, except where doing so would give rise to a claim of "nullification or impairment" of benefits under Article 2011. Paragraph two sets out consultation procedures to be followed prior to the designation of new monopolies. The final paragraph obliges each party to ensure that the monopolies that it designates in the future do not engage in trade-distorting practices in their monopoly markets or in anticompetitive practices in other markets, to the detriment of persons of the other party.

Article 2011 addresses cases in which a party takes action that, while not inconsistent with any of its specific obligations under the FTA, nevertheless causes a "nullification or impairment" of the benefits that the other party reasonably expected would accrue to it under the Agreement. The provision is derived from the provisions of, and practice under Article XXIII of the GATT. Under Article 2011 a party may make its complaint regarding nullification or impairment the subject of consultations and, subsequently, consideration by a panel under the procedures set out in Chapter Eighteen.

B. Action Required or Appropriate to Implement FTA

None of the provisions of Chapter Twenty of the FTA will require changes in existing federal law or regulations.

1. Zinc Alloy Imports

Under Article 2003 of the Agreement, either party may take measures essential to protect its national security interests that would otherwise be inconsistent with the Agreement. Article 2003 is very similar to the national security exception in Article XXI of the GATT.

During consultations concerning legislation to implement the Agreement, Congress requested that the Administration carefully monitor U.S. imports of zinc alloys from Canada once the Agreement entered into force. Congress was concerned:

> a) that the elimination of tariffs on zinc alloys over ten years under Article 401 could result in increased imports of Canadian zinc and, consequently, serious injury to U.S. producers of zinc alloys; and
>
> b) that such injury could in turn erode the U.S. defense industrial base.

The Administration notes that zinc alloy has been considered an import-sensitive material with defense requirement applications, and was excepted from tariff negotiations during the Tokyo Round. The Executive Branch will monitor imports of zinc alloys from Canada with a view to taking any action consistent with the Agreement, including Article 2003, and U.S. law. Moreover, the Executive Branch will consult with the Congress concerning any developments with respect to imports of Canadian zinc alloys that are relevant to U.S. national security interests.

2. "Cultural Industries"

The two-way provision of Article 2005, covering "cultural industries" is drafted so as to apply equally and reciprocally to both parties. However, the Administration is mindful of the

concern of the Congress that in fact, it is the Government of Canada and not the United States that is more likely to exercise the exemption for cultural industries in Article 2005. Any invocation of this exception to escape obligations of the Agreement that would otherwise apply would be regrettable, particularly because the Administration attaches such a high priority to adequate and effective protection of intellectual property rights and to fair and equitable market access to United States persons that rely upon copyright, patent and process patent protection.

Under Article 2005(2), the United States is exempt from FTA obligations for measures of equivalent commercial effect in response to Canadian measures under Article 2005(1) that would otherwise be inconsistent with the Agreement. It would be inappropriate to speculate about the circumstances under which such action might be appropriate and, if so, the nature of any particular action. In determining any such future action, however, the Administration would be mindful of the importance of discouraging, if at all possible, the exercise of an reliance on Article 2005(1) by the Government of Canada. The Administration would also endeavor to fashion a response in such a manner as to discourage the erection of similar nontariff barriers in other countries. The Administration would also consult closely with the affected industry to ensure that the equivalent commercial effect of such barriers is fully assessed.

3. Plywood Standards

The President may commence tariff reductions on items referred to in Article 2008 only after he reports to the Congress, following consultations with the Congress and the private sector, that the common plywood performance standards referred to in section ____ of the bill implementing the Agreement have been sufficiently incorporated into building codes in the United States and Canada.

DRAFT IMPLEMENTING LEGISLATION

FOR

U.S.-CANADA FREE TRADE AGREEMENT

FTA4

HLC

DISCUSSION DRAFT--JUNE 8, 1988

Draft Proposed by the Committee on Ways and Means and the Committee on Finance
[Part in bold roman type is proposed by Ways and Means but not by Finance]
[Part in italic is proposed by Finance but not by Ways and Means]
[Part in brackets is matter not within the jurisdiction of Ways and Means or Finance]

100TH CONGRESS
2D SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To implement the United States-Canada Free-Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.--This Act may be cited as the ``United States-Canada Free-Trade Agreement Implementation Act of 1988''.

(b) TABLE OF CONTENTS.--

SEC. 2. PURPOSES.

The purposes of this Act are--

(1) to approve and implement the Free-Trade Agreement between the United States and Canada negotiated under the authority of section 102 of the Trade Act of 1974;

(2) to strengthen and develop economic relations between the United States and Canada for their mutual benefit;

(3) to establish a free-trade area between the two

nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

TITLE I--APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT AND RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW

SEC. 101. APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.--Pursuant to sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves--

(1) the United States-Canada Free-Trade Agreement (hereinafter in this Act referred to as the ``Agreement'') entered into on January 2, 1988, and submitted to the Congress on _____;

(2) the letters exchanged between the Governments of the United States and Canada--

(A) dated January 2, 1988, relating to negotiations regarding Articles 301 (Rules of Origin) and 401 (Tariff Elimination) of the Agreement, and

(B) dated January 2, 1988, relating to negotiations regarding Article 2008 (Plywood Standards) of the Agreement; and

(3) the statement of administrative action proposed to implement the Agreement that was submitted to the

Congress on _____.

(b) Conditions for Entry Into Force of the Agreement.--The President is authorized, at such time as the President determines that Canada has taken satisfactory steps to implement the obligations of the Agreement, to exchange notes with the Government of Canada providing for the entry into force, on or after January 1, 1989, of the Agreement with respect to the United States.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.--*At such time as the President determines that Canada has taken measures necessary to comply with the obligations of the Agreement, including compliance by provincial and local governments of Canada, the President is authorized to exchange notes with the Government of Canada providing for the entry into force, on or after January 1, 1989, of the Agreement with respect to the United States.*

(c) REPORT ON CANADIAN PRACTICES.--Within 60 days after the date of the enactment of this Act (but not later than December 15, 1988), the United States Trade Representative shall submit to the Congress a report identifying, to the maximum extent practicable, major current Canadian practices (and the legal authority for such practices) that, in the opinion of the United States Trade Representative--

(1) are not in conformity with the Agreement; and

(2) require a change of Canadian law, regulation,

policy, or practice to enable Canada to conform with its international obligations under the Agreement.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

(a) UNITED STATES LAWS TO PREVAIL IN CONFLICT.--No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with any law of the United States shall have effect.

(b) RELATIONSHIP OF AGREEMENT TO STATE AND LOCAL LAW.--

(1) The provisions of the Agreement prevail over--

(A) any conflicting State law; and

(B) any conflicting application of any State law to any person or circumstance;

to the extent of the conflict.

(2) Upon the enactment of this Act, the President shall, in accordance with section 306(c)(2)(A) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114c), initiate consultations with the State governments on the implementation of the obligations of the United States under the Agreement. Such consultations shall be made through the intergovernmental policy advisory committees on trade established under such section for the purpose of achieving conformity of State laws and practices with the Agreement.

(3) The United States may bring an action challenging any provision of State law, or the application thereof to

any person or circumstance, on the ground that the provision or application is inconsistent with the Agreement.

(4) For purposes of this subsection, the term ``State law'' includes--

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

(B) any State law [regulating or] taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.--No person other than the United States shall--

(1) have any cause of action or defense under the Agreement or by virtue of congressional approval thereof, or

(2) in any action brought under any provision of law, challenge any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement.

(d) INITIAL IMPLEMENTING REGULATIONS.--Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(3) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after

the date of entry into force of the Agreement. In the case of any implementing action that takes effect after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

(e) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.--The provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply as if the Agreement were an agreement approved under section 2(a) of that Act whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation, finding or opinion under, the Agreement; but such provisions shall not apply to any bill to implement any such requirement, amendment, recommendation, finding, or opinion that is submitted to the Congress after the close of the 30th month after the month in which the Agreement enters into force.

SEC. 103. CONSULTATION AND LAY-OVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

(a) CONSULTATION AND LAY-OVER REQUIREMENTS.--If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and lay-over requirements of this section, such action may be proclaimed only if--

(1) the President has obtained advice regarding the proposed action from--

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974, and

(B) the United States International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth--

(A) the action proposed to be proclaimed and the reasons therefor, and

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

(3) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.--No action proclaimed by the President under the authority of this Act, if such action is not subject to the consultation and lay-over requirements under subsection (a), may take

effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 104. HARMONIZED SYSTEM.

(a) DEFINITION.--As used in this Act, the term ``Harmonized System'' means the nomenclature system established under the International Convention on the Harmonized Commodity Description and Coding System (done at Brussels on June 14, 1983, and the protocol thereto, done at Brussels on June 24, 1986) as implemented under United States law.

(b) INTERIM APPLICATION OF TSUS.--If the International Convention, and the protocol thereto, referred to in subsection (a) is not implemented under United States law before the Agreement enters into force, the President, subject to subsection (c), shall proclaim such modifications to the Tariff Schedules of the United States (19 U.S.C. 1202) as may be necessary to give effect, until such time as such Convention and protocol are so implemented, to the rules of origin, schedule of rate reductions, and other provisions that would, but for the absence of such implementation, be proclaimed under the authority of this Act to, or in terms of, the Harmonized System to implement the obligations of the United States under the Agreement.

(c) RESTRICTIONS.--

(1) No modification described in subsection (b) that

is to take effect concurrently with the entry into force of the Agreement may be proclaimed unless the text of the modification is published in the Federal Register at least 30 days before the date of entry into force.

(2) All modifications proclaimed under the authority of subsection (b) after the Agreement enters into force with respect to the United States are subject to the consultation and lay-over requirements of section 103(a).

SEC. 105. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE.

Subject to section 103 or 104(c), as appropriate, and any other applicable restriction or limitation in this Act on the proclaiming of actions or the issuing of regulations to carry out this Act or any amendment made by this Act, after the date of the enactment of this Act--

(1) the President may proclaim such actions; and

(2) other appropriate officers of the United States Government may issue such regulations;

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

SEC. 106. EFFECTIVE DATES.

The provisions of this title, and of sections 1 and 2 of

this Act, shall take effect on the date of the enactment of this Act.

TITLE II--TARIFF MODIFICATIONS, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT, AND OTHER CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS SPECIFIED IN THE AGREEMENT.--The President may proclaim --

(1) such modifications or continuance of any existing duty;

(2) such continuance of existing duty-free or excise treatment; or

(3) such additional duties;

as the President determines to be necessary or appropriate to carry out Article 401 of the Agreement and the schedule of duty reductions with respect to Canada set forth in Annexes 401.2 and 401.7 to the Agreement, as approved under section 101(a)(1). For purposes of proclaiming necessary modifications under such Annex 401.2, articles covered under subheading 9813.00.05 (contained in the United States Schedule in such Annex) shall be treated as being subject to otherwise applicable customs duties if the articles, or merchandise incorporating such articles, are exported to Canada.

(b) OTHER TARIFF MODIFICATIONS.--Subject to the consultation and lay-over requirements of section 103(a), the

President may proclaim--

(1) such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the Agreement;

(2) such modifications or continuance of any existing duty;

(3) such continuance of existing duty-free or excise treatment; or

(4) such additional duties;

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement.

(c) MODIFICATIONS AFFECTING PLYWOOD.--

(1) The Congress encourages the President to facilitate the preparation, and the implementation with Canada, of common performance standards for the use of softwood plywood and other structural panels in construction applications in the United States and Canada.

(2) The President shall report to the Congress on the incorporation of common plywood performance standards into building codes in the United States and Canada and may implement the provisions of Article 2008 of the

Agreement when he determines that the necessary conditions have been met.

(3) Any tariff reduction undertaken pursuant to paragraph (2) shall be in equal annual increments ending January 1, 1998, unless those reductions commence after January 1, 1991.

SEC. 202. RULES OF ORIGIN.

(a) IN GENERAL.--

(1) For purposes of implementing the tariff treatment contemplated under the Agreement, goods originate in the territory of a Party if--

(A) they are wholly obtained or produced in the territory of either Party or both Parties; or

(B) they--

(i) have been transformed in the territory of either Party or both Parties so as to be subject to a change in tariff classification as described in the Annex rules or to such other requirements as the Annex rules may provide when no change in tariff classifications occurs, and

(ii) meet the other conditions set out in the Annex.

(2) A good shall not be considered to originate in the territory of a party under paragraph (1)(B) merely by virtue of having undergone--

(A) simple packaging or, except as expressly provided by the Annex rules, combining operations;

(B) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(C) any process or work in respect of which it is established, or in respect of which the facts as ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of Chapter 3 of the Agreement.

(3) Accessories, spare parts, or tools delivered with any piece of equipment, machinery, apparatus, or vehicle that form part of its standard equipment shall be treated as having the same origin as that equipment, machinery, apparatus, or vehicle if the quantities and values of such accessories, spare parts, or tools are customary for the equipment, machinery, apparatus, or vehicle.

(b) TRANSSHIPMENT.--Goods exported from the territory of one Party originate in the territory of that Party only if--

(1) the goods meet the applicable requirements of subsection (a) and are shipped to the territory of the other Party without having entered the commerce of any third country;

(2) the goods, if shipped through the territory of a third country, do not undergo any operation other than

unloading, reloading, or any operation necessary to transport them to the territory of the other Party or to preserve them in good condition; and

(3) the documents related to the exportation and shipment of the goods from the territory of a Party show the territory of the other Party as their final destination.

(c) INTERPRETATION.--In interpreting this section, the following apply:

(1) Whenever the processing or assembly of goods in the territory of either Party or both Parties results in one of the changes in tariff classification described in the Annex rules, such goods shall be considered to have been transformed in the territory of that Party and shall be treated as goods originating in the territory of that Party if--

(A) such processing or assembly occurs entirely within the territory of either Party or both Parties; and

(B) such goods have not subsequently undergone any processing or assembly outside the territories of the Parties that improves the goods in condition or advances them in value.

(2) Whenever the assembly of goods in the territory of a Party fails to result in a change of tariff

classification because either--

(A) the goods were imported into the territory of the Party in an unassembled or a disassembled form and were classified as unassembled or disassembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System; or

(B) the tariff subheading for the goods provides for both the goods themselves and their parts;

such goods shall not be treated as goods originating in the territory of a Party.

(3) Notwithstanding paragraph (2), goods described in that paragraph shall be considered to have been transformed in the territory of a Party and be treated as goods originating in the territory of the Party if--

(A) the value of materials originating in the territory of either Party or both Parties used or consumed in the production of the goods plus the direct cost of assembling the goods in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party; and

(B) the goods have not subsequent to assembly undergone processing or further assembly in a third country and they meet the requirements of subsection (b).

(4) The provisions of paragraph (3) shall not apply to goods of chapters 61-63 of the Harmonized System.

(5) In making the determination required by paragraph (3)(A) and in making the same or a similar determination when required by the Annex rules, where materials originating in the territory of either Party or both Parties and materials obtained or produced in a third country are used or consumed together in the production of goods in the territory of a Party, the value of materials originating in the territory of either Party or both Parties may be treated as such only to the extent that it is directly attributable to the goods under consideration.

(6) In applying the Annex rules, a specific rule shall take precedence over a more general rule.

(d) ANNEX RULES.--

(1) The President is authorized to proclaim, as a part of the Harmonized System, the rules set forth under the heading ``Rules'' in Annex 301.2 of the Agreement. For purposes of carrying out this paragraph, the phrase ``any other heading'' in paragraph 11 of Section XV in such Annex 301.2 shall be treated as a reference to any other heading of chapter 74 of the Harmonized System.

(2) Subject to the consultation and lay-over requirements of section 103, the President is authorized

to proclaim such modifications to the rules as may from time-to-time be agreed to by the United States and Canada.

(e) AUTOMOTIVE PRODUCTS.--

(1) The President is authorized to proclaim such modifications to the definition of Canadian articles (relating to the administration of the Auto Products Trade Act of 1965) in the general notes of the Harmonized System as may be necessary to conform that definition with Chapter 3 of the Agreement.

(2) For purposes of administering the value requirement (as defined in section 304(c)(3)) with respect to vehicles, the Secretary of the Treasury shall prescribe regulations governing the averaging of the value content of vehicles of the same class, or of sister vehicles, assembled in the same plant as an alternative to the calculation of the value content of each vehicle.

(f) DEFINITIONS.--For purposes of this section:

(1) The term ``Annex'' means--

(A) the interpretative guidelines set forth in subsection (c); and

(B) the Annex rules.

(2) The term ``Annex rules'' means the rules proclaimed under subsection (d).

(3) The term ``direct cost of processing or direct

cost of assembling'' means the costs directly incurred in, or that can reasonably be allocated to, the production of goods, including--

(A) the cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(B) the cost of inspecting and testing the goods;

(C) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of a Party;

(D) development, design, and engineering costs;

(E) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of goods; and

(F) royalty, licensing, or other like payments for the right to the goods;

but not including--

(i) costs relating to the general expense of doing business, such as the cost of providing

executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) brokerage charges relating to the importation and exportation of goods;

(iii) the costs for telephone, mail, and other means of communication;

(iv) packing costs for exporting the goods;

(v) royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; or

(vii) profit on the goods.

(4) The term ``goods wholly obtained or produced in the territory of either Party or both Parties'' means--

(A) mineral goods extracted in the territory of either Party or both Parties;

(B) goods harvested in the territory of either Party or both Parties;

(C) live animals born and raised in the territory of either Party or both Parties;

(D) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or

recorded with a Party and flying its flag;

(E) goods produced on board factory ships from the goods referred to in subparagraph (D) provided such factory ships are registered or recorded with that Party and fly its flag;

(F) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that Party has rights to exploit such seabed;

(G) goods taken from space, provided they are obtained by a Party or a person of a Party and not processed in a third country;

(H) waste and scrap derived from manufacturing operations and used goods, provided they were collected in the territory of either Party or both Parties and are fit only for the recovery of raw materials; and

(I) goods produced in the territory of either Party or both Parties exclusively from goods referred to in subparagraphs (A) to (H) inclusive or from their derivatives, at any stage of production.

(5) The term ``materials'' means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods.

(6) The term ``Party'' means Canada or the United States.

(7) The term ``territory'' means--

(A) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources; and

(B) with respect to the United States--

(i) the customs territory of the United States, which includes the fifty states, the District of Columbia and the Commonwealth of Puerto Rico,

(ii) the foreign trade zones located in the United States, and the Commonwealth of Puerto Rico, and

(iii) any area beyond the territorial seas of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

(8) The term ``third country'' means any country other than Canada or the United States or any territory

not a part of the territory of either.

(9) The term ``value of materials originating in the territory of either Party or both Parties'' means the aggregate of--

(A) the price paid by the producer of an exported good for materials originating in the territory of either Party or both Parties or for materials imported from a third country used or consumed in the production of such originating materials; and

(B) when not included in that price, the following costs related thereto--

(i) freight, insurance, packing, and all other costs incurred in transporting any of the materials referred to in subparagraph (A) to the location of the producer;

(ii) duties, taxes, and brokerage fees on such materials paid in the territory of either Party or both Parties;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

(iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement

on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(10) The term ``value of the goods when exported to the territory of the other Party'' means the aggregate of--

(A) the price paid by the producer for all materials, whether or not the materials originate in either Party or both Parties, and, when not included in the price paid for the materials, the costs related to--

(i) freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) duties, taxes, and brokerage fees on all materials paid in the territory of either Party or both Parties;

(iii) the cost of waste of spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

(iv) the value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade; and

(B) the direct cost of processing or the direct cost of assembling the goods.

(g) SPECIAL PROVISION REGARDING APPLICATION OF RULES OF ORIGIN TO CERTAIN APPAREL.--The Secretary of Commerce is authorized to issue regulations governing the exportation to Canada of apparel products that are cut, or knit to shape, and sewn, or otherwise assembled, in either Party from fabric produced or obtained in a third country for the purpose of establishing which exports of such products shall be permitted to claim preferential tariff treatment under the rules of origin of the Agreement, to the extent that the Agreement provides for quantitative limits on the availability of preferential tariff treatment for such products.

SEC. 203. CUSTOMS USER FEES.

Section 13031(b) of the Consolidated Omnibus Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is amended by adding at the end thereof the following new paragraph:

``(10) The fee charged under subsection (a)(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.''.

SEC. 204. DRAWBACK.

(a) DEFINITIONS.--For purposes of this section, the term ``drawback eligible goods'' means--

(1) goods provided for under paragraph 8 of Article 404 of the Agreement;

(2) goods provided for under paragraphs 4 and 5 of such Article; and

(3) goods other than those referred to in paragraphs (1) and (2) that the United States and Canada agree are not subject to paragraphs 1, 2, and 3 of such Article.

(b) IMPLEMENTATION OF ARTICLE 404.--The President is authorized--

(1) to proclaim the identity, in accordance with the nomenclature of the Harmonized System, of goods referred to in subsection (a)(1); and

(2) subject to the consultation and lay-over requirements of section 103(a), to proclaim--

(A) the identity, in accordance with the nomenclature of the Harmonized System, of goods referred to in subsection (a)(3); and

(B) a delay in the taking effect of Article 404 of the Agreement to a date later than January 1, 1994, with respect to any merchandise if the United

States and Canada agree to the delay under paragraph 7 of such Article.

(c) CONSEQUENTIAL AMENDMENTS.--

(1) BONDED MANUFACTURING WAREHOUSES.--Section 311 of the Tariff Act of 1930 (19 U.S.C. 1311) is amended by adding at the end thereof the following new paragraph:

``No article manufactured in a bonded warehouse other than--

``(1) an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988; or

``(2) an article to the extent that it is made with merchandise of United States or Canadian origin as determined in accordance with section 202 of such 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.''.

(2) BONDED SMELTING AND REFINING WAREHOUSES.--Section 312 of the Tariff Act of 1930 (19 U.S.C. 1312) is further amended--

(A) by inserting after ``exportation'' in each of

paragraphs (1) and (4) of subsection (b) the following: ``(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)''; and

(B) by inserting after ``exportation'' in subsection (d) the following: ``(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 was produced from metal-bearing materials of Canadian origin as determined in accordance with section 202 of such Act of 1988 or unless the product is a drawback eligible good under section 204(a) of such Act of 1988)''.

(3) DRAWBACK.--Section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) is amended by adding at the end thereof the following new subsection:

``(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 of merchandise other than the following does not constitute an exportation:

``(1) Drawback eligible goods under section 204(a) of such Act of 1988.

``(2) Merchandise to the extent that goods of Canadian origin, as determined in accordance with section 202 of such Act of 1988, are incorporated into or directly consumed in the production of the merchandise.''.

(4) MANIPULATION IN WAREHOUSE.--The second sentence of section 562 of the Tariff Act of 1930 (19 U.S.C. 1562) is amended by striking out the proviso thereto and the colon preceding such proviso and inserting the following: ``; 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.

Merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph (1) 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.''.

(5) FOREIGN TRADE ZONES.--Section 3(a) of the Act of

June 18, 1934 (commonly known as the ``Foreign Trade Zones Act''; 19 U.S.C. 81c) is further amended by adding before the period at the end thereof the following: ``*Provided, further,* That with the exception of articles to the extent made from merchandise of United States or Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 or drawback eligible goods under section 204(a) of such 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, 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.''.

SEC. 205. ENFORCEMENT.

(a) CERTIFICATIONS OF ORIGIN.--

(1) Any person that certifies in writing that goods exported to Canada meet the rules of origin under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 shall provide, upon request by any customs official, a copy of that certification.

(2) Any person that fails to provide a copy of a certification requested under paragraph (1) shall be liable to the United States for a civil penalty not to exceed $10,000.

(3) Any person that certifies falsely that goods exported to Canada meet the rules of origin under such section 202 shall be liable to the United States for the same civil penalties provided under section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) for a violation of section 592(a) of such Act by fraud, gross negligence, or negligence, as the case may be. The procedures and provisions of section 592 of such Act that are applicable to a violation under section 592(a) of such Act shall apply with respect to such false certification.

(b) RECORDKEEPING REQUIREMENTS.--Section 508 of the Tariff Act of 1930 (19 U.S.C. 1508) is amended--

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(2) by inserting ``and (b)'' after ``(a)'' in subsection (c), as so redesignated;

(3) by adding after subsection (a) the following new subsection:

``(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.''; and

(4) by adding at the end thereof the following new subsection:

``(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.''.

SEC. 206. EXEMPTION FROM LOTTERY TICKET EMBARGO.

Section 305(a) of the Tariff Act of 1930 (19 U.S.C. 1305(a)) is amended by striking out the period at the end of the first paragraph and inserting the following: ``: *Provided further*, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.''.

SEC. 207. EXERCISE OF GATT RIGHTS REGARDING PRODUCTION-BASED DUTY REMISSION PROGRAM WITH RESPECT TO AUTOMOTIVE PRODUCTS.

The United States Trade Representative shall--

(1) undertake a study to determine whether the production-based duty remission program of Canada with respect to automotive products is inconsistent with the provisions of, or otherwise denies the benefits to the

United States under, the General Agreement on Tariffs and Trade; and

(2) determine whether to initiate an investigation under section 302 of the Trade Act of 1974 with respect to such production-based duty remission program.

The Trade Representative shall submit a report to Congress no later than June 30, 1989 (or no later than September 30, 1989, if the Trade Representative considers an extension to be necessary) containing the results of the study under paragraph (1) and the determination under paragraph (2) and the reasons therefor.

SEC. 208. EFFECTIVE DATES.

Sections 201 through 107, and the amendments made by such sections, shall take effect on the day on which the Agreement enters into force.

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.

On the day on which 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 submit for publication in the Federal Register notice of the determination on which the recommendation is based.

(2) 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) 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) A temporary duty imposed under paragraph (3) 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) 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) 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)(A) The Secretary shall--

(i) exercise responsibilities under this subsection without regard to whether the domestic industry has requested action under this subsection; and

(ii) 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) The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.

(b) MEAT IMPORT ACT OF 1979.--The Meat Import Act of 1979 (19 U.S.C. 2253 note) is amended--

(1) by inserting at the end of subsection (b)(2) the following flush sentence:

``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).'';

(2) by striking out ``1,204,600,000'' in subsection (c) and inserting ``1,147,600,000'';

(3) by striking out ``1,250,000,000 pounds'' in

subsection (f)(1) and inserting ``(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)'';

(4) by inserting ``other than Canada'' after ``countries'' each place it appears in subsection (i); and

(5) by amending subsection (l) to read as follows:

``(1) If the President--

``(1) has--

``(A) proclaimed limitations on meat articles under the preceding provisions of this section, or

``(B) entered into one or more agreements other than with Canada regarding meat articles pursuant to section 204 of the Agricultural Act of 1956; and

``(2) determines that the Government of Canada has not taken equivalent action;

the President may by proclamation limit the total quantities of articles described in subsection (b)(2)(A), (B), and (C) and originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) that may enter the United States. A limitation imposed under the preceding sentence shall be only to the extent that, and only for such period of time as,

the President determines sufficient to prevent frustration of the limitations placed on meat articles imported from other countries under this section or actions taken with respect to meat articles under agreements negotiated pursuant to section 204 of the Agricultural Act of 1956.''.

(c) AGRICULTURAL ADJUSTMENT ACT.--Section 22(f) of the Agricultural Adjustment Act (7 U.S.C. 624(f)) is amended by inserting immediately after ``section'' the following: ``; except that the President may, pursuant to Articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from import restrictions imposed under this section''.

[(d) IMPORTATION OF ANIMAL VACCINES.--The second sentence of the eighth paragraph of the matter under the heading ``Bureau of Animal Industry'' of the Act entitled ``An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1914'', approved March 4, 1913 (21 U.S.C. 152), is amended to read as follows: ``The importation into the United States, without a permit from the Secretary of Agriculture, or without certification by the country of origin as prescribed by the Secretary of Agriculture, of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and the importation of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in

the treatment of domestic animals, are hereby prohibited.''.

[(e) IMPORTATION OF SEEDS.--Section 302(e) of the Federal Seed Act (7 U.S.C. 1582(e)) is amended to read as follows:

[``(e) The provisions of this title requiring certain seeds to be stained shall not apply--

[``(1) to alfalfa or clover seed originating in Canada,

[``(2) when seeds required to be stained will not be sold within the United States and will be used for seed production only by or for the importer or consignee and the importer of record or consignee files a statement in accordance with the rules and regulations prescribed under section 402 of this Act certifying that such seeds will be used only for seed production by or for the importer or consignee.''.

[(f) PLANT AND ANIMAL HEALTH REGULATIONS.--

[(1) Section 103 of the Act of May 23, 1957 (7 U.S.C. 150bb) is amended--

[(A) by striking out ``No'' and inserting [``(a) Except as provided in subsection (c) of this section, no''; and

[(B) by adding at the end thereof the following new subsection:

[``(c) No person shall move any plant pest from Canada into or through the United States or accept delivery of any

plant pest moving from Canada into or through the United States, unless such movement is made in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant pests.''.

[(2) Section 104 of the Act of May 23, 1957 (7 U.S.C. 105c) is amended--

[(A) by striking out ``Any letter'' in subsection (a) and inserting ``Except as provided in subsection (b), any letter'';

[(B) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and

[(C) by inserting after subsection (a) the following new subsection:

[``(b) Any letter, parcel, box, or other package from Canada containing any plant pest, whether sealed as letter-rate postal matter or not, is declared to be nonmailable, and will not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, except in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant pests.''.

[(3) The Act of August 20, 1912 (7 U.S.C. 154) is amended--

[(A) by striking out ``*Provided* '' the first time

it appears in section 1 and inserting ``*Provided*, That the Secretary of Agriculture may waive the permit requirement for nursery stock imported or offered for entry from Canada: *Provided further*''; and

[(B) by striking out the period at the end of each of sections 2 and 4 and inserting ``: *Provided*, That this section shall not apply to nursery stock which arrives from or is imported from Canada.''.

[(4) Section 4 of the Act of August 20, 1912 (7 U.S.C. 158) is amended by striking out the period at the end thereof and inserting ``: *Provided*, That this section shall not apply to nursery stock which has been imported from Canada.''.

[(5) Section 4(a) of the Act of January 3, 1975 (7 U.S.C. 2803(a)) is amended to read as follows:

[``(a) No person shall knowingly move any noxious weed, identified in a regulation promulgated by the Secretary, into or through the United States or interstate, unless such movement is--

[``(1) from Canada, or authorized under general or specific permit from the Secretary; and

[``(2) made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as the Secretary may promulgate under this

Act to prevent the dissemination into the United States, or interstate, of such noxious weeds.''.]

(6) The first sentence of section 306(a) of the Tariff Act of 1930 (19 U.S.C. 1306(a)) is amended by striking out ``If'' preceding the first proviso thereto and inserting ``Except with regard to Canada, if''.

SEC. 302. RELIEF FROM IMPORTS.

(a) RELIEF FROM IMPORTS OF CANADIAN ARTICLES.--

(1) A petition requesting action under this section for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the United States International Trade Commission (hereafter in this section referred to as the ``Commission'') by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The Commission shall transmit a copy of any petition filed under this paragraph to the United States Trade Representative.

(2)(A) Upon the filing of a petition under paragraph (1), the Commission shall promptly initiate an investigation to determine whether, as a result of a reduction or elimination of a duty provided for under the United States-Canada Free-Trade Agreement, an article originating in Canada is being imported into the United States in such increased quantities, in absolute terms,

and under such conditions, so that imports of such Canadian article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article like, or directly competitive with, the imported article.

(B) The provisions of--

(i) paragraphs (2), (3), (4), (6), and (7) of subsection (b), other than paragraph (2)(B), and

(ii) subsection (c),

of section 201 of the Trade Act of 1974 (19 U.S.C. 2251), as in effect on June 1, 1988, shall apply with respect to any investigation initiated under subparagraph (A).

(C) By no later than the date that is 120 days after the date on which an investigation is initiated under subparagraph (A), the Commission shall make a determination under subparagraph (A) with respect to such investigation.

(D) If the determination made by the Commission under subparagraph (A) with respect to imports of an article is affirmative, the Commission shall find the amount of import relief the President is authorized to provide under paragraph (3)(C) that is necessary to remedy the injury found by the Commission in such affirmative determination.

(E)(i) By no later than the date that is 30 days

after the date on which a determination is made under subparagraph (A) with respect to an investigation, the Commission shall submit to the President a report on the determination and the basis for the determination. The report shall include any dissenting or separate views and a transcript of the hearings and any briefs which were submitted to the Commission in the course of the investigation initiated under subparagraph (A).

(ii) Any finding made under subparagraph (D) shall be included in the report submitted to the President under clause (i).

(F) Upon submitting a report to the President under subparagraph (E), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(G) For purposes of this subsection--

(i) The provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this paragraph as if such determinations and findings were made under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

(ii) The determination of whether an article originates in Canada shall be made in accordance with section 202.

(3)(A) By no later than the date that is 30 days after the date on which the President receives the report of the Commission containing an affirmative determination made by the Commission under paragraph (2)(A), the President shall provide relief from imports of the article originating in Canada that is the subject of such determination to the extent that, and for such time (not to exceed 3 years) as the President determines to be necessary to remedy the injury found by the Commission.

(B) The President is not required to provide import relief by reason of this paragraph if the President determines that the provision of such import relief is not in the national economic interest.

(C) The import relief that the President is authorized to provide by reason of this paragraph is limited to--

(i) the suspension of any further reductions provided for under the Agreement in the duty imposed on the article that is the subject of such relief,

(ii) an increase in the rate of duty on such article originating in Canada to a level that does not exceed the lessor of--

(I) the most-favored-nation rate of duty that is imposed by the United States on such article at the time such import relief is provided, or

(II) the most-favored-nation rate of duty that is imposed by the United States on such article on the day before the date on which the Agreement enters into force, or

(iii) in the case of a duty applied on a seasonal basis to an article imported from Canada, an increase in the rate of duty on such article to a level that does not exceed the most-favored-nation rate of duty imposed by the United States on such article for the corresponding season immediately prior to the date on which the Agreement enters into force.

(4)(A) No investigation may be initiated under paragraph (2)(A) with respect to any article for which import relief has been provided under this subsection.

(B) No import relief may be provided under this subsection after the date that is 10 years after the date on which the Agreement enters into force.

(5) For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under paragraph (3) shall be treated as action taken under chapter I of title II of such Act.

(b) RELIEF FROM IMPORTS FROM ALL COUNTRIES.--

(1)(A) If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the Commission makes an affirmative determination (or a determination which is treated as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930) that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry, the Commission shall also find (and report to the President at the time such injury determination is submitted to the President), whether imports from Canada of the article that is the subject of such investigation are substantial and are contributing importantly to such injury or threat thereof.

(B)(i) In determining under subparagraph (A) whether imports of an article from Canada are substantial, the Commission shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports of such article to be substantial.

(ii) For purposes of this paragraph, the term ``contributing importantly'' means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

(2)(A) In determining whether to take action under

chapter 1 of title II of the Trade Act of 1974 with respect to imports from Canada, the President shall determine whether imports from Canada of such article are substantial and contributing importantly to the serious injury or threat of serious injury found by the Commission.

(B) In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall exclude from such action imports from Canada if the President has made a negative determination under subparagraph (A) regarding imports from Canada.

(3)(A) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, the President may, if the President thereafter determines that a surge in imports from Canada of the article that is the subject of the action is undermining the effectiveness of the action, take appropriate action under such chapter with respect to such imports from Canada to include such imports in such action.

(B)(i) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, any entity, including a trade association, firm, certified or

recognized union, or group of workers, that is representative of an industry for which such action is being taken under such chapter may request the Commission to conduct an investigation of imports from Canada of the article that is the subject of such action.

(ii) Upon receiving a request under clause (i), the Commission shall conduct an investigation to determine whether a surge in imports from Canada of the article that is the subject of action being taken under chapter 1 of title II of the Trade Act of 1974 undermines the effectiveness of such action. The Commission shall submit the findings of such investigation to the President by no later than the date that is 30 days after the date on which such request is received by the Commission.

(C) For purposes of this paragraph, the term ``surge'' means a significant increase in imports over the trend for a reasonably recent base period for which data are available.

(c) Any entity that is representative of an industry may submit a petition for relief under subsection (a), under chapter 1 of title II of the Trade Act of 1974, or under both subsection (a) and such chapter at the same time. If petitions are submitted by such an entity under subsection (a) and such chapter at the same time, the Commission shall consider such petitions jointly.

SEC. 303. ACTS IDENTIFIED IN NATIONAL TRADE ESTIMATES.

With respect to any act, policy, or practice of Canada that is identified in the annual report submitted under section 181 of the Trade Act of 1974 (19 U.S.C. 2241), the United States Trade Representative shall include--

(1) information with respect to the action taken regarding such act, policy, or practice, including but not limited to--

(A) any action under section 301 of the Trade Act of 1974 (including resolution through appropriate dispute settlement procedures),

(B) any action under section 307 of the Trade and Tariff Act of 1984, and

(C) negotiations or consultations, whether on a bilateral or multilateral basis; or

(2) the reasons that no action was taken regarding such act, policy, or practice.

SEC. 304. NEGOTIATIONS REGARDING CERTAIN SECTORS; BIENNIAL REPORTS.

(a) IN GENERAL.--The President is authorized to enter into negotiations with the Government of Canada for the purpose of concluding an agreement (including an agreement amending the Agreement) or agreements to--

(1) liberalize trade in services in accordance with Article 1405 of the Agreement;

(2) liberalize investment rules;

(3) improve the protection of intellectual property rights;

(4) increase the value requirement applied for purposes of determining whether an automotive product is treated as originating in Canada or the United States; and

(5) obtain the exclusion from the transport rates established under the Western Grain Transportation Act of agricultural goods that originate in Canada and are shipped via east coast ports for consumption in the United States.

(b) NEGOTIATING OBJECTIVES REGARDING SERVICES, INVESTMENT, AND INTELLECTUAL PROPERTY RIGHTS.--

(1) The objectives of the United States in negotiations conducted under subsection (a)(1) to liberalize trade in services include--

(A) the elimination from developing services sectors not covered in the Agreement of those tariff, nontariff, and subsidy trade distortions that have potential to affect significant bilateral trade;

(B) the elimination or reduction of measures grandfathered by the Agreement that deny or restrict national treatment in the provision of services;

(C) the elimination of local presence

requirements; and

(D) the liberalization of government procurement of services.

In conducting such negotiations, the President shall consult with the services advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

(2) The objectives of the United States in any negotiations conducted under subsection (a)(2) to liberalize investment rules include--

(A) the elimination of direct investment screening;

(B) the extension of the principles of the Agreement to energy and cultural industries, to the extent such industries are not currently covered by the Agreement;

(C) the elimination of technology transfer requirements and other performance requirements not currently barred by the Agreement; and

(D) the subjection of all investment disputes to dispute resolution under Chapter 18 of the Agreement.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in investment.

(3) The objectives of the United States in any

negotiations conducted under subsection (a)(3) to improve the protection of intellectual property rights include--

(A) the recognition and adequate protection of intellectual property, including copyrights, patents, process patents, trademarks, mask works, and trade secrets; and

(B) the establishment of dispute resolution procedures and binational enforcement of intellectual property standards.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in intellectual property.

(c) NEGOTIATING OBJECTIVES REGARDING AUTOMOTIVE PRODUCTS.--

(1) In conducting negotiations under subsection (a)(4) regarding the value requirement for automotive products, the President shall seek to conclude an agreement by no later than January 1, 1990, to increase the value requirement from 50 percent to at least 60 percent.

(2) The President is authorized, through January 1, 1999, to proclaim any agreed increase in the value requirement.

(3) As used in this section, the term ``value requirement'' means the minimum percentage of the value

of an automotive product that must be accounted for by the value of the materials, in the product, that originated in the United States or Canada, or both, plus the direct cost of processing performed in the United States or Canada, or both, with respect to the product.

(d) NEGOTIATION OF LIMITATION ON POTATO TRADE.--

(1) During the 5-year period beginning on the date of enactment of this Act, the President is authorized to enter into negotiations with Canada for the purpose of obtaining an agreement to limit the exportation and importation of all potatoes between the United States and Canada, including seed potatoes, fresh, chilled or frozen potatoes, dried, dessicated or dehydrated potatoes, and potatoes otherwise prepared or preserved. Any agreement negotiated under this subsection shall provide for an annual limitation divided equally into each half of the year.

(2) For the purpose of conducting negotiations under paragraph (1), the Secretary of Agriculture and the United States Trade Representative shall consult with representatives of the potato producing industry, including the Ad Hoc Potato Advisory Group and the United States/Canada Horticultural Industry Advisory Committee, to solicit their views on negotiations with Canada for reciprocal quantitative limits on the potato trade.

(3) The President is authorized to direct the Secretary of the Treasury to--

(A) carry out such actions as may be necessary or appropriate to ensure the attainment of the objectives of any agreement that is entered into under this section; and

(B) enforce any quantitative limitation, restriction, and other terms contained in the agreement.

Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of any article that is subject to the agreement.

(4) Actions taken under paragraph (3) are exempt from the Anti-Embargo Act.

(e) CANADIAN CONTROLS ON FISH.--

(1) Within 30 days of the application by Canada of export controls on unprocessed fish, or the application of landing requirements for fish caught in Canadian waters, the President shall take appropriate action to enforce United States rights under the General Agreement on Tariffs and Trade that are retained in article 1203 of the Agreement.

(2) In enforcing the United States rights referred to

in paragraph (1), the President has discretion--

(A) to bring a challenge to the offending Canadian practices before the GATT;

(B) retaliate against such offending practices;

(C) seek resolution directly with Canada;

(D) refer the matter for dispute resolution to the Canada-United States Trade Commission; or

(E) take other action that the President considers appropriate to enforce such United States rights.

(f) BIENNIAL REPORT.--The President shall submit to the Congress, at the close of each biennial period occurring after the date on which the Agreement enters into force, a report regarding--

(1) the status of the negotiations regarding agreements that the President is authorized to enter into with Canada under this section;

(2) the effectiveness and operation of any agreement entered into under section 304 that is in force with respect to the United States;

(3) the effectiveness of operation of the Agreement generally; and

(4) the actions taken by the United States and Canada to implement further the objectives of the Agreement.

[SEC. 305. ENERGY.

[(a) ALASKAN OIL.--Section 7(d)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(d)(1)) is amended by inserting ``, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed a per annum average of 50,000 barrels per day, in addition to exports under (A) and (B) (provided that any ocean transportation of such oil shall be by vessels documented for United States coastwise trade)'', before ``may be exported''.]

[(b) URANIUM.--Section 161(v) of the Atomic Energy Act of 1954 (42 U.S.C. 2201(v)) is amended by inserting ``For purposes of this subsection and of section 305 of Public Law 99-591 (100 Stat. 3341-209, 210), `foreign origin' excludes source or special nuclear material originating in Canada.'' before ``The Commission shall establish''.]

SEC. 306. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN CANADIAN PRODUCTS.

Section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)) is amended by inserting after subparagraph (C) the following new subparagraph:

``(D) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.--Except as otherwise agreed by the United States and Canada under paragraph 3 of Article 1304 of the United States-Canada Free-Trade Agreement, the

term `eligible product' includes a product or service of Canada having a contract value of $25,000 or more that would be covered for procurement by the United States under the GATT Agreement on Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement.''

[SEC. 307. IMMIGRATION.

[(a) TEMPORARY ENTRY FOR BUSINESS PERSONS; NONIMMIGRANT TRADERS AND INVESTORS.--Upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, a citizen of Canada, and the spouse and children of any such citizen if accompanying or following to join such citizen, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of said Act if entering solely for a purpose specified in Annex 1502.1 (United States of America), Part B--Traders and Investors of the Agreement.

[(b) TEMPORARY ENTRY FOR BUSINESS PERSONS; NONIMMIGRANT PROFESSIONALS.--Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

``(e) Notwithstanding any other provision of this Act, an

alien who is a citizen of Canada and seeks to enter the United States under and in pursuance of the provisions 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.''']

[SEC. 308. FINANCIAL SERVICES.

[Paragraph ``Seventh'' of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) is amended by adding at the end thereof the following new sentence: [``To the extent that an association may deal in, underwrite, and purchase for its own account obligations backed by the full faith and credit of the United States, or of any State or of any political subdivision thereof, an association may deal in, underwrite, and purchase debt obligations backed to a comparable degree by Canada or its political subdivisions where the obligations of the agents are incurred in their capacity as agents for their principals and the principals are ultimately and unconditionally liable in respect of the debt obligations.'']

SEC. 309. STEEL PRODUCTS.

Nothing in this Act shall preclude any discussion or negotiation between the United States and Canada in order to conclude voluntary restraint agreements or mutually agreed quantitative restrictions on the volume of steel products

entering the United States from Canada.

SEC. 310. ENFORCEMENT OF LAWS CONSERVING AMERICAN LOBSTER.

No whole lobster of the species homarus americanus (whether fresh, chilled, frozen, or otherwise preserved or prepared) that--

(1) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan (50 CFR 649), or any successor to that plan, implemented under title III of the Magnuson Fishery Conservation and Management Act, or

(2) is bearing eggs attached to its abdominal appendages, or

(3) bears evidence of the forcible removal of extruded eggs from its abdominal appendages,

and no parts of such a lobster, may be imported into the United States after the date of enactment of this Act.

SEC. 311. EFFECTIVE DATES.

(a) IN GENERAL.--Except as provided in subsection (b), the provisions of this title, and the amendments made by this title, shall take effect on the date on which the Agreement enters into force.

(b) EXCEPTIONS.--This section, section 304 (except subsection (f)), and section 309 take effect on the date of the enactment of this Act.

TITLE IV--BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING

AND COUNTERVAILING DUTY CASES.

SEC. 401. AMENDMENTS TO SECTION 516A OF THE TARIFF ACT OF 1930.

(a) TIME LIMITS.--Section 516A(a) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)) is amended by adding at the end thereof the following new paragraph:

``(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--

``(i) notice of any determination described in paragraph (1)(B) or a determination described in clause (ii) or (iii) of paragraph (2)(B), or

``(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of paragraph (2)(B), or

``(B) the date on which the Government of Canada receives notice of a determination described in clause (vi) of paragraph (2)(B).''.

(b) DEFINITIONS.--Section 516A(f) of the Tariff Act of

1930 (19 U.S.C. 1516a(f)) is amended by adding at the end thereof the following new paragraphs:

``(5) AGREEMENT.--The term `Agreement' means the United States-Canada Free-Trade Agreement.

``(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 `Canadian Secretary' means the secretary provided for in paragraph 5 of Article 1909 of the Agreement.''.

(c) REVIEW REGARDING CANADIAN MERCHANDISE.--Section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a) is amended by adding at the end thereof the following new subsection:

``(g) REVIEW OF COUNTERVAILING DUTY AND ANTIDUMPING DUTY DETERMINATIONS INVOLVING CANADIAN 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) of paragraph (2)(B) of subsection (a),

if made in connection with a proceeding regarding a class or kind of Canadian 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 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 requested review by a binational panel pursuant to Article 1904 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 requested review of the original determination, or

``(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 Agreement.

``(B) SPECIAL RULE.--A determination described in subparagraph (A)(i) 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. 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 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 in the United States Court of Appeals for the District of Columbia Circuit. 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.

``(B) Other constitutional review.--Review is available under subsection (a) with respect to a determination solely concerning a constitutional issue (other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

``(C) Commencement of review.--Notwithstanding the time limits in subsection (a), within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B)

by filing an action in accordance with the rules of the court.

``(D) Transfer of Actions to Appropriate Court.--Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

``(E) Frivolous claims.--Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28, United States Code, and the Federal Rules of Civil Procedure.

``(F) Security.--

``(i) Subparagraph (A) actions.--The security requirements of Rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

``(ii) Subparagraph (B) actions.--No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall

be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

``(G) Panel record.--The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

``(H) Appeal to supreme court of court orders issued in subparagraph (a) actions.--Notwithstanding any other provision of law, any order of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal

directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

``(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 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 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 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, 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 Agreement.

``(iv) JUDICIAL REVIEW.--Any action taken by the administering authority or the United States Customs Service under this subparagraph 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.

``(6) INJUNCTIVE RELIEF.--In the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, the provisions of subsection (c)(2) shall not apply.

``(7) IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS UNDER ARTICLE 1904.--If a determination is referred to a binational panel or extraordinary challenge committee under 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.--In the case of a determination with respect to which the provisions of paragraph (2)

apply, an interested party who--

``(i) was a party to the proceeding in connection with which the matter arises, and

``(ii) is a person of the United States within the meaning of article 201(1) of the Agreement,

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 Agreement. Such request 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.

``(B) SERVICE OF REQUEST FOR BINATIONAL PANEL REVIEW.--

``(i) SERVICE BY INTERESTED PARTY.--If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, 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.

``(ii) SERVICE BY UNITED STATES SECRETARY.--If an interested party to the proceeding who is a person of Canada, within the meaning of article 201(1) of the Agreement, requests binational panel review of a determination by filing a request with the Canadian 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.

``(9) REPRESENTATION IN PANEL PROCEEDINGS.--In the case of binational panel proceedings convened under chapter 19 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.''.

(d) STANDARDS OF REVIEW.--Section 516A(b) of the Tariff Act of 1930 (19 U.S.C. 1516a(b)) is amended by adding a new paragraph (3) as follows:

``(3) EFFECT OF DECISIONS BY 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 Agreement.''.

SEC. 402. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) Jurisdiction of Court of International

Trade.--Section 1581(i) of title 28, United States Code, is amended by adding at the end thereof the following flush sentence: ``This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is either reviewable 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 United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.''.

(b) Commencement of Action in Court of International Trade.--Subsection (i) of section 2631 of title 28, United States Code, is amended--

(1) by striking out ``jurisdiction, other'' and inserting in lieu thereof ``jurisdiction (other'', and

(2) by striking out ``of this section,'' and inserting in lieu thereof ``of this section or an antidumping or countervailing duty determination which is either reviewable 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 United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930)''.

(c) Relief in Court of International Trade.--Section 2643(c) of title 28, United States Code, is amended--

(1) by striking out ``and (4)'' in paragraph (1) and

inserting in lieu thereof ``(4), and (5)''; and

(2) by adding at the end thereof the following new paragraph:

``(5) In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority, the Court of International Trade may not order declaratory relief.''.

(d) Declaratory Judgments.--Subsection (a) of section 2201 of title 28, United States Code, is amended--

(1) by striking out ``1954 or'' and inserting in lieu thereof ``1986,''; and

(2) by inserting ``or in any civil action involving an antidumping or countervailing duty proceeding in which the class or kind of merchandise is Canadian, as determined by the administering authority,'' after ``of title 11,''.

(e) Actions Under the Agreement.--

(1) Chapter 95 of title 28, United States Code, is amended by inserting after section 1583 the following new section:

``§ 1584. Civil actions under 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) 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.''.

(2) The table of contents for chapter 95 of title 28, United States Code, is amended by inserting after the item relating to section 1583 the following new item:

``1584. Civil actions under the United States-Canada Free-Trade Agreement.''.

SEC. 403. CONFORMING AMENDMENTS TO THE TARIFF ACT OF 1930.

(a) Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)) is amended by striking out all after ``recommending the same,'' and inserting in lieu thereof ``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 United States-Canada Free-Trade Agreement.''.

(b) Section 514(b) of the Tariff Act of 1930 (19 U.S.C. 1514(b)) is amended by inserting ``, 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 United States-Canada Free-Trade Agreement'' after ``International Trade''.

(c) Section 777 of the Tariff Act of 1930 (19 U.S.C. 1677f) is amended by adding at the end thereof the following new subsection:

``(d) DISCLOSURE OF PROPRIETARY INFORMATION UNDER PROTECTIVE ORDERS ISSUED PURSUANT TO 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 United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of 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 (but not privileged material as defined by the rules of procedure referred to in article 1904(14) of the United States-Canada Agreement) in the administrative record made during the proceeding in question.

``(B) AUTHORIZED PERSONS.--For purposes of this subsection, the term ``authorized persons'' means--

``(i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

``(ii) counsel for parties to such panel or

committee proceeding, and employees of such counsel, and

``(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 implement the United States-Canada Agreement with respect to such proceeding.

``(C) REVIEW.--A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

``(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 substantially 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, or to induce the violation of, any provision of a protective order issued under this subsection or to violate, or to induce the violation of, any provision of an undertaking entered into with an authorized agency of Canada to protect proprietary material during binational panel review pursuant to article 1904 of the United States-Canada Agreement.

``(4) SANCTIONS FOR VIOLATION OF PROTECTIVE ORDERS.--Any person 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, disbarment from practice before the administering authority or the Commission, as the administering authority 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, of an undertaking entered into by any person with an authorized agency of Canada.

``(5) REVIEW OF SANCTIONS.--Any person against whom sanctions are imposed under paragraph (4) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to the administering authority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

``(6) ENFORCEMENT OF SANCTIONS.--If any person fails

to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, the administering authority or the Commission, as appropriate, may file an action in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

``(7) TESTIMONY AND PRODUCTION OF PAPERS.--

``(A) AUTHORITY TO OBTAIN INFORMATION.--For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents--

``(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

``(ii) may summon witnesses, take testimony, and administer oaths,

``(iii) and may require any individual or entity to produce pertinent documents, books, or

records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority and the Commission, when authorized by the administering authority or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

``(B) WITNESSES AND EVIDENCE.--The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subparagraph (A) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. At the request of the administering authority or the Commission, as appropriate, such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization

or other entity, issue any order requiring such individual or entity to appear before the administering authority or the Commission, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

``(C) MANDAMUS.--At the request of the administering authority or the Commission, as appropriate, any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

``(D) DEPOSITIONS.--For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any

individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the administering authority or Commission, as provided in this paragraph.

``(E) FEES AND MILEAGE OF WITNESSES.--Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.''.

(d) Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by adding at the end thereof the following new paragraph (18):

``(18) UNITED STATES-CANADA AGREEMENT.--The term `United States-Canada Agreement' means the United States-Canada Free-Trade Agreement.''.

SEC. 404. AMENDMENTS TO ANTIDUMPING AND COUNTERVAILING DUTY LAW.

Any amendment enacted after the Agreement enters into force with respect to the United States that is made to--

(1) section 303 or title VII of the Tariff Act of 1930, or any successor statute, or

(2) any other statute which--

(A) provides for judicial review of final determinations under such section, title, or statute, or

(B) indicates the standard of review to be applied,

shall apply to Canada only to the extent specified in such amendment.

SEC. 405. ORGANIZATIONAL AND ADMINISTRATIVE PROVISIONS REGARDING THE IMPLEMENTATION OF CHAPTERS 18 AND 19 OF THE AGREEMENT.

(a) APPOINTMENT OF INDIVIDUALS TO PANELS AND COMMITTEES.--

(1)(A) There is established within the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) an interagency group which shall--

(i) be chaired by the United States Trade Representative (hereafter in this section referred to as the ``Trade Representative''), and

(ii) consist of such officers (or the designees thereof) of the United States Government as the Trade Representative considers appropriate.

(B) The interagency group established under subparagraph (A) shall, in a manner consistent with Chapter 19 of the Agreement--

(i) prepare by January 3 of each calendar year--

(I) a list of individuals who are qualified to serve as United States members of binational panels convened under chapter 19 of the Agreement, and

(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under such chapter,

(ii) if the Trade Representative makes a request under paragraph (5)(A)(i) with respect to a final roster during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final roster,

(iii) exercise oversight of the administration of the United States Secretariat that is authorized to be established under subsection (e), and

(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under Annex 1901.13 of the Agreement.

(2)(A) The Trade Representative shall select individuals from the respective lists prepared by the interagency group under paragraph (1)(B)(i) for placement on a preliminary roster of candidates eligible to serve as members of binational panels under Annex 1901.2 of the

Agreement and a preliminary roster of individuals eligible for selection as members of extraordinary challenge committees convened under chapter 19 of the Agreement.

(B) The selection of individuals for--

(i) placement on lists prepared under clause (i) or (ii) of paragraph (1)(B),

(ii) placement on preliminary rosters under subparagraph (A),

(iii) placement on final rosters under paragraph (3), and

(iv) appointment for service on binational panels and extraordinary challenge committees under paragraph (6),

shall be made without regard to political affiliation.

(C) For purposes of applying section 1001 of title 18, United States Code, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (1) or the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for listing under clause (i) or (ii) of paragraph (1)(B), placement on preliminary rosters under subparagraph (A), placement on final rosters under paragraph (3), or appointment to

panels or committees under paragraph (6), shall be treated as matters within the jurisdiction of an agency of the United States.

(3)(A) By no later than January 3 of each calendar year, the United States Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the ``appropriate Congressional Committees'') the preliminary rosters of those individuals selected by the Trade Representative under paragraph (2)(A) to be candidates eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year.

(B) Upon submission of the preliminary rosters under subparagraph (A) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals listed on the preliminary rosters.

(C) The Trade Representative may add or delete individuals from the preliminary rosters submitted under subparagraph (A) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the

appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary rosters.

(4)(A) By no later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final rosters of those individuals selected by the Trade Representative to be candidates eligible to serve on binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final roster only if such individual appeared on the corresponding preliminary roster described in paragraph (3) during the 15-day period ending on the date on which that final roster is submitted to the appropriate Congressional Committees under this subparagraph.

(B) Except as provided in paragraph (5), no additions may be made to the final rosters after the final rosters are submitted to the appropriate Congressional Committees under subparagraph (A).

(5)(A) If, after the Trade Representative has submitted the final rosters to the appropriate Congressional Committees under paragraph (4)(A) for a calendar year and before July 1 of such calendar year,

the Trade Representative determines that additional individuals need to be added to a final roster, the Trade Representative shall--

(i) request the interagency group established under paragraph (1)(A) to prepare a list of individuals who are qualified to be added to such roster,

(ii) select individuals from the list prepared by the interagency group under paragraph (1)(B)(ii) to be included in a proposed amendment to such final roster, and

(iii) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final roster developed by the Trade Representative under clause (ii).

(B) Upon submission of a proposed amendment under subparagraph (A)(iii) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(C) The Trade Representative may add or delete individuals from any proposed amendment submitted under subparagraph (A)(iii) after consulting the appropriate Congressional Committees with regard to such addition or

deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

(D)(i) If the Trade Representative submits under subparagraph (A)(iii) in any calendar year a proposed amendment to a final roster, the Trade Representative shall, by no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and the individuals included in the final form of such amendment shall be added to the final roster.

(ii) An individual may be included in the final form of an amendment submitted under clause (i) only if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted under clause (i).

(iii) Individuals added to a final roster under clause (i) shall be eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement, as the case may be, during the 6-month period beginning on October 1 of

the calendar year in which such addition occurs.

(iv) No additions may be made to the final form of an amendment described in clause (i) after the final form of such amendment is submitted to the appropriate Congressional Committees under clause (i).

(6) Except as otherwise provided in paragraph (7)(B), only the candidates listed on the final rosters submitted to the appropriate Congressional Committees during a calendar year under paragraph (4)(A), as may be amended under paragraph (5)(D)(i), may serve as the United States members of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year. Whenever members of such panels or committees are to be appointed by the United States during such 1-year period, the Trade Representative shall appoint such members from such final rosters.

(7)(A) Except as otherwise provided in this paragraph, no individual may serve as a United States member of a binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of this subsection.

(B)(i) The Trade Representative may, without regard

to the provisions of paragraphs (3), (4), or (6) (other than paragraph (3)(A)), appoint individuals from the preliminary rosters submitted to the appropriate Congressional Committees under paragraph (3)(A) to be, and candidates listed on such preliminary rosters may serve as, United States members of binational panels or extraordinary challenge committees that are convened pursuant to chapter 19 of the Agreement during the period beginning on the date on which the Agreement enters into force and ending on the date that is 3 months after such date.

(ii) If the Agreement enters into force after January 3, 1989, the provisions of this subsection shall be applied with respect to the calendar year in which the Agreement enters into force--

(I) by substituting ``the date that is 30 days after the date on which the Agreement enters into force'' for ``January 3 of each calendar year'' in paragraphs (1)(B)(i) and (3)(A), and

(ii) by substituting ``the date that is 3 months after the date on which the Agreement enters into force'' for ``March 31 of each calendar year'' in paragraph (4)(A).

(b) STATUS OF PANELISTS.--Notwithstanding any other provision of law, individuals appointed by the United States

to serve on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist such appointed individuals, shall not be considered to be employees or special employees of, or to be otherwise affiliated with, the Government of the United States.

(c) IMMUNITY OF PANELISTS.--With the exception of acts described in section 777f(d)(3) of the Tariff Act of 1930, as added by this Act, individuals serving on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(d) REGULATIONS.--The administering authority under title VII of the Tariff Act of 1930, the United States International Trade Commission, and the United States Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapters 18 and 19 of the Agreement. Initial regulations to carry out such functions shall be issued prior to the date of entry into force of the Agreement.

(e) ESTABLISHMENT OF UNITED STATES SECRETARIAT.--The

President is authorized to establish within any department or agency of the Federal Government a United States Secretariat which, subject to the oversight of the interagency group established under subsection (a)(1)(A), shall facilitate--

(1) the operation of chapters 18 and 19 of the Agreement, and

(2) the work of the binational panels and extraordinary challenge committees convened under chapter 19 of the Agreement.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS FOR THE SECRETARIAT, THE PANELS, AND THE COMMITTEES.

(a) THE SECRETARIAT.--There are authorized to be appropriated to the department or agency within which the United States Secretariat described in chapters 18 and 19 of the Agreement is established the lesser of--

(1) such sums as may be necessary, or

(2) $5,000,000,

for each fiscal year succeeding fiscal year 1988 for the establishment and operations of such United States Secretariat and for the payment of the United States share of the expenses of the United States-Canada Trade Commission established under chapter 18 of the Agreement.

(b) PANELS AND COMMITTEES.--

(1) There are authorized to be appropriated to the Office of the United States Trade Representative for

fiscal year 1989 such sums as may be necessary to pay during such fiscal year the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement.

(2) The United States Trade Representative is authorized to transfer funds appropriated pursuant to the authorization provided under paragraph (1) to any department or agency of the United States in order to facilitate payment of the expenses described in paragraph (1).

(3) Funds appropriated for the payment of expenses described in paragraph (1) during any fiscal year may be expended only to the extent such funds do not exceed the amount authorized to be appropriated under paragraph (1) for such fiscal year. This paragraph shall apply, notwithstanding any law enacted after the date of enactment of this Act, unless such subsequent law specifically provides that this paragraph shall not apply and specifically cites this paragraph.

SEC. 407. TESTIMONY AND PRODUCTION OF PAPERS IN EXTRAORDINARY CHALLENGES.

(a) AUTHORITY OF EXTRAORDINARY CHALLENGE COMMITTEE TO OBTAIN INFORMATION.--If an extraordinary challenge committee (hereinafter referred to in this section as the

``committee'') is convened pursuant to article 1904(13) of the Agreement, and the allegations before the committee include a matter referred to in article 1904(13)(a)(i) of the Agreement, for the purposes of carrying out its functions and duties under Annex 1904.13 of the Agreement, the committee--

(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity,

(2) may summon witnesses, take testimony, and administer oaths,

(3) may require any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question, and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) WITNESSES AND EVIDENCE.--The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a), the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) MANDAMUS.--Any court referred to in subsection (b) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) DEPOSITIONS.--The committee may order testimony to be taken by deposition at any stage of the committee review.

Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

SEC. 408. REQUESTS FOR REVIEW OF CANADIAN ANTIDUMPING AND COUNTERVAILING DUTY DETERMINATIONS.

(a) REQUESTS FOR REVIEW BY THE UNITED STATES.--In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, requests by the United States for binational panel review under article 1904 of the Agreement shall be made by the United States Secretary, described in article 1909(4) of the Agreement.

(b) REQUESTS FOR REVIEW BY A PERSON OF THE UNITED STATES.--In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, a person of the United States, within the meaning of article 201(1) of

the Agreement, may request a binational panel review of such determination by filing with the United States Secretary, described in article 1909(4) of the Agreement, such a request within the time limit provided for in article 1904(4) of the Agreement. The 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 Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority shall prescribe by regulations. The request for such panel review shall not preclude the United States, Canada, or any other person from challenging before a binational panel the basis for a particular request for review.

(c) SERVICE OF REQUEST FOR REVIEW.--Whenever binational panel review is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would be regarded as interested parties to the proceeding if the determination in question had been made under title VII of the Tariff Act of 1930.

SEC. 409. SUBSIDIES.

(a) NEGOTIATING AUTHORITY.--

(1) The President is authorized to enter into an agreement with Canada, including an agreement to amend the Agreement, on rules applicable to trade between the

United States and Canada that--

(A) deal with unfair pricing and government subsidization, and

(B) provide for increased discipline on subsidies.

(2)(A) The objectives of the United States in negotiating an agreement under paragraph (1) include (but are not limited to)--

(i) achievement, on an expedited basis, of increased discipline on government production and export subsidies that have a significant impact, directly or indirectly, on bilateral trade between the United States and Canada; and

(ii) attainment of increased and more effective discipline on those Canadian Government (including provincial) subsidies having the most significant adverse impact on United States producers that compete with subsidized products of Canada in the markets of the United States and Canada.

(B) Special emphasis should be given in negotiating an agreement under paragraph (1) to obtain discipline on Canadian subsidy programs that adversely affect United States industries which directly compete with subsidized imports.

(3) The United States members of the working group

established under article 1907 of the Agreement shall--

(A) consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) regarding--

(i) the issues being considered by the working group, and

(ii) as appropriate, the objectives and strategy of the United States in the negotiations, and

(B) beginning in January 1990, submit an annual report to such Congressional Committees on the progress being made in the negotiations to obtain an agreement that meets the objectives described in paragraph (2).

(4) Notwithstanding any other provision of this Act or of any other law, the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) shall not apply to any bill or joint resolution that implements an agreement entered into under paragraph (1), unless the President determines and notifies the Congress that such agreement--

(A) will provide greater discipline over government subsidies and no less discipline over

unfair pricing practices by producers than that provided by the agreements described in paragraphs (5) and (6) of section 2 of the Trade Agreements Act of 1979 (the Subsidies Code and Antidumping Code), respectively, taking into account the effects of the Agreement, and

(B) will neither undermine such multilateral discipline nor detract from United States efforts to increase such discipline on a multilateral basis in, or subsequent to, the Uruguay Round of multilateral trade negotiations.

(b) ACTIONS REGARDING SUBSIDIZED CANADIAN PRODUCTS PENDING AGREEMENT.--

(1)(A) Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe that--

(i) imports with which the industry directly competes are being subsidized by the Government of Canada; and

(ii) the industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies are developed under Article 1907 of the Agreement;

may request the United States Trade Representative (hereinafter referred to in this section as the ``Trade Representative'') to make a determination regarding whether there is a reasonable likelihood that both the subsidization described in clause (i) may exist and the deterioration described in clause (ii) may occur.

(B)(i) The Trade Representative, in consultation with the Secretary of Commerce, shall make a determination under subparagraph (A) within 90 days after the date on which the request for the determination is received.

(ii) Any determination by the Trade Representative under subparagraph (A), whether affirmative or negative, does not in any way prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Department of Commerce, the United States International Trade Commission, or the Trade Representative under the countervailing duty law or any other trade remedy law.

(C) If, after the Trade Representatives makes an affirmative determination under subparagraph (A), an entity that is representative of the industry that is the subject of such determination requests information under this paragraph, the Trade Representative shall--

(i) make available to the industry information under the provisions of title III of the Trade Act of

1974,

(ii) recommend to the President that an investigation by the United States International Trade Commission be requested under section 332 of the Tariff Act of 1930 regarding the relevant issues, or

(iii) take actions described in both clause (i) and (ii).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under clause (i) or (ii), or both, as the case may be.

(2)(A) If the Trade Representative makes an affirmative determination under paragraph (1)(A), the Trade Representative, in consultation with the Secretary of Commerce, shall, after--

(i) review of all applicable information,

(ii) compliance with subparagraph (B), and

(iii) consultation with the industry that is the subject of such determination,

decide whether any action is appropriate with respect to the industry under title III of the Trade Act of 1974 (including, but not limited to, the initiation of an investigation under section 302(c) of such Act) or under section 702 of the Tariff Act of 1930 (including, but not

limited to, initiation of an investigation under section 702(a) of the Tariff Act of 1930).

(B) In deciding under subparagraph (A) what action may be appropriate, the Trade Representative, in consultation with the Secretary of Commerce--

(i) shall seek the advice of the advisory committees established under section 135 of the Trade Act of 1974;

(ii) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(iii) shall coordinate with the inter-agency committee established under section 242 of the Trade Expansion Act of 1962; and

(iv) may ask the President to ask the United States International Trade Commission for advice under section 131 of the Trade Act of 1974.

(C) If any action taken pursuant to subparagraph (A) involves--

(i) the suspension, withdrawal, preventing the application, or refraining from the proclamation of benefits of trade agreement concessions to carry out a trade agreement with Canada, or

(ii) the imposition of duties or other import restrictions on the goods of Canada,

such action shall be applied with respect to the Canadian articles that are found to be subsidized, unless application of the action to other Canadian articles would be more effective.

(3) Nothing in this subsection may be construed to alter in any manner the requirements in effect before the enactment of this Act for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

SEC. 410. EFFECTIVE DATE OF TITLE; TRANSITION PROVISIONS.

(a) EFFECTIVE DATE.--The provisions of this title, and the amendments made by this title, shall take effect on the date on which the Agreement enters into force with respect to the United States.

(b) TERMINATION.--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 with respect to the United States, 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.

(c) TRANSITION PROVISIONS.--

(1) If on the date on which the Agreement should cease to be in force an investigation or enforcement proceeding concerning the violation of a protective order issued under section 777(d) of the Tariff Act of 1930 (as amended by this Act) or a Canadian undertaking is pending, such investigation or proceeding shall continue and sanctions may continue to be imposed in accordance with the provisions of such section.

(2) If on the date on which the Agreement should cease to be in force a binational panel review under Article 1904 of the Agreement is pending, or has been requested, with respect to a determination to which section 516A(g)(2) of the Tariff Act of 1930 (as added by this Act) applies, such determination shall be reviewable under section 516A(a) of the Tariff Act of 1930. In the case of a determination to which the provisions of this paragraph apply, the time limits for commencing an action under section 516A(a)(2)(A) of the Tariff Act of 1930 shall not begin to run until the date on which the Agreement ceases to be in force.

SEC. 411. SEVERABILITY.

If any provision of this Act, any amendment made by this

Act, or the application of such a provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.