Calendar No. 167

100TH CONGRESS
1st Session | SENATE | REPORT
100-71

OMNIBUS TRADE ACT OF 1987

REPORT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ON

S. 490

together with

ADDITIONAL VIEWS

JUNE 12, 1987.—Ordered to be printed
Filed under authority of the order of the Senate of June 11, 1987

U.S. GOVERNMENT PRINTING OFFICE
73-814 WASHINGTON : 1987

73-814 O 87 - 1

CONTENTS

GLOSSARY OF TERMS

ACTN	Advisory Committee on Trade Negotiations
AVE	Ad Valorem Equivalent
CAP	Common Agricultural Policy
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CBO	Congressional Budget Office
CITA	Committee for the Implementation of Textile Agreements
CRS	Congressional Research Service
EC	European Community
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FTZ	Foreign Trade Zone
FY	Fiscal Year
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
GSP	Generalized System of Preferences
IMF	International Monetary Fund
ITC	International Trade Commission
LDDC	Least Developed Developing Countries
MBD	Million Barrels Per Day
MFA	Multi-Fiber Arrangement
MFN	Most-Favored-Nation
MOSS	Market -Oriented, Sector-Specific
NICS	Newly Industrialized Countries
NME	Non-Market Economy
NTT	Nippon Telegraph and Telephone Corporation
OMA	Orderly Marketing Agreement
OPEC	Organization of Petroleum Exporting Countries
P.L.	Public Law
SECO	Substantially Equivalent Competitive Opportunities
TAA	Trade Adjustment Assistance
TCA	Trade Competitiveness Assistance
TPSC	Trade Policy Staff Committee
TSUS	Tariff Schedules of the United States
USDA	United States Department of Agriculture
USTR	United States Trade Representative
VRA	Voluntary Restraint Agreement

Calendar No. 167

100TH CONGRESS
1st Session

SENATE

REPORT
100-71

OMNIBUS TRADE ACT OF 1987

JUNE 21, 1987.—Ordered to be printed

Filed, under authority of the order of the Senate of June 11, 1987

Mr. BENTSEN, from the Committee on Finance, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 490]

The Committee on Finance, to which was referred the bill (S. 490) to authorize negotiations of reciprocal trade agreements, to strengthen United States trade laws, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

I. PURPOSES

The purposes of S. 490 are:

(1) To authorize the President, for a period of six years, to enter into trade agreements with foreign countries for the purposes of establishing more open, fair and equitable market excess for U.S. exporters, reducing or eliminating barriers to trade and other trade-distorting practices, obtaining an appropriate overall balance between benefits and concessions with the agricultural manufacturing, mining and services sectors, and improved management of the new global economy;

(2) To strengthen U.S. trade laws by mandating responses to unfair distortions of international trade and by improving the enforcement of the antidumping and countervailing duty laws of the United States;

(3) To enhance the competitiveness of U.S. firms and workers by amending current import relief laws to promote positive ad-

73-814

justment in import-impacted industries and by establishing a new program of trade competitiveness assistance for firms and workers, making training a condition of benefits;

(4) To defend and expand intellectual property rights in international trade through improvements in remedies under the Tariff Act of 1930 and improvements in access to technology;

(5) To assure timely action to defend the national security when it is threatened by imports;

(6) To improve management of U.S. trade strategy through better formulation of U.S. trade policy;

(7) To improve U.S. agricultural competitiveness; and

(8) Through these and other actions, to improve standards of living in the United States, strengthen U.S. economic leadership in the world and, ultimately, increase world trade and standards of living throughout the world.

II. GENERAL STATEMENT

The Omnibus Trade Act of 1987, which the Committee on Finance now reports to the Senate with amendments, is the first comprehensive review of the U.S. trade laws in over 12 years. The last such review was completed with enactment of the Trade Act of 1974, Public Law 93-618, enacted January 3, 1975. Since then, occasional improvements in the trade laws of the United States have been enacted, including the Trade Agreements Act of 1979, which implemented the results of the Tokyo Round of Multilateral Trade Negotiations, and the Omnibus Trade and Tariff Act of 1984, which extended the Generalized System of Preferences and made other much-needed changes in U.S. trade laws. There have been other interim trade laws, for example, Public Law 99-47, implementing the first bilateral free trade area agreement with Israel and Public Law 98-67, authorizing the Caribbean Basin Economic Recovery program. But this is the first comprehensive trade bill since the 1974 Act.

The Trade Act of 1974 followed shortly after the first oil shock, the decision to allow floating exchange rates, and the refusal of Congress to implement fully certain non-tariff trade agreements arising out of the Kennedy Round of Multilateral Trade Negotiations. Now we have seen the impact of these events, and the need to respond to the changing circumstances of our time. The Committee notes that the President has requested comprehensive trade and competitiveness legislation and that the House of Representatives has recently acted favorably on legislation in this field.

THE IMPACT OF TRADE

The Committee is concerned that the Tokyo Round trade negotiations (1974 through 1979) and the Legislative Branch and Executive Branch actions to implement the Tokyo Round trade agreements have not had the effect of improving the American standard of living as intended.

The United States has moved since 1981 from a position of merchandise trade deficits in the range of $40 billion per year, with current account surpluses and creditor nation status, to a position as this bill is reported of unsustainable trade deficits ($169 billion in 1986), huge and growing current account deficits in the range of $130 billion per year, and dubious status as the world's largest debtor. Our country has become far and away the largest importer in history, yet its exports have barely grown in this decade. While export volume grew slightly in the third and fourth quarters of 1986, the $216 billion in U.S. exports in 1986 were less than the $223 billion scored in 1981 or the $217 billion in 1984.

Perhaps worst of all, the composition of the merchandise trade deficit has changed, from mainly an oil deficit (which was bad enough) to mainly a manufacturing and agricultural deficit (which strikes at the heart of U.S. export strength). Agricultural exports alone have fallen from about $40 billion in 1980 to about $25 billion in 1987, and if petroleum prices in 1986 had been the same as in 1980, then the 1986 trade deficit could well have been over $200 billion. The mainstays of American trade competitiveness are in trouble. By last year, West Germany surpassed the United States as the world's leading exporter, and Japan—at 10 percent of world exports in 1986 compared to 10.3 percent for the United States—may well move into second place in 1987.

The size and composition of the trade deficit have caused wrenching adjustments on the American farm, in American industry and among American workers. For example, the widening trade deficit reduced real potential GNP by nearly 20 percent in 1983 and 1984, according to the ITC. The National Association of Manufacturers found that two million fewer jobs were created as a result of the growth in the trade deficit in this period. The trade-based deterioration of American high-wage industrial employment has concentrated employment growth this decade in the lower-wage service sector.

In considering this bill, the Committee took account of the fact that the trade deficit may have stopped growing. On the other hand the most reasonable assumption is that the current account deficit and the national indebtedness will continue to grow as the debt of the United States to the world compounds. Unless the trade deficit is addressed at this time, the United States may actually have to adopt a policy of running trade surpluses in the 1990's, just the kind of trade interference this country has fought to discourage in other countries over the last 50 years. The worsening economic situation in this country's trade accounts may actually undermine its economic leadership in the future.

It appears, moreover, that while U.S. imports were increasing nearly 40 percent by value between 1980 and 1985, the world was experiencing the most meager growth in world trade in 30 years. The effect has been to concentrate adjustment pressures in the United States, without much improvement in world trade. One way trade is not good for this country, and it is not good for the world either.

Despite stupendous U.S. importing, the world economy is not duplicating the increases in trade seen in previous decades. The 1982 to 1986 world recovery is the fourth since 1958. Yet, expansion of world trade volume and of real Gross Domestic Product (GDP) since 1982 have been the weakest of these four episodes, according to the GATT. World export performance has been particularly weak. Export volume has risen only one-half as fast since 1982 as during the comparable 1958 to 1962 and 1967 to 1971 recoveries. Since 1980, merchandise trade volume has grown only 2.5 percent annually, half the pace achieved in the 1970's and a third the 8.5 percent annual growth rate achieved during the 1960's. According to the GATT:

> World trade in manufactures, traditionally the fastest growing of the three main product categories, increased by a mere 3 percent in volume in 1986, down from 5.5 percent in 1985. Leaving aside the recession years 1958, 1975 and 1982, this was the poorest performance in three decades.

(*International Trade in 1986 and Current Prospects,* GATT, Geneva, March 1987.)

Finally, and perhaps most important, the American economy and the world economy, for that matter, are now in the midst of fundamental change, which requires basic changes in economic policies as well as comprehensive review of domestic trade policies and international trade rules.

The existing international trading system was originally planned for a world of fixed exchange rates and a comparatively small volume of international trade. It has had to adapt to a world economy of over $2 trillion in exports and perhaps $30 trillion in currency exchange transactions annually. Yet American trade policy was slow to adapt to the changes. It is this failure to adapt to change, more than any other single factor, that has confounded the trade agreements reached in the Tokyo Round.

Learning to manage the world economy for the betterment of the world as a whole is, therefore, a fundamental concern.

The Committee has attacked these challenges vigorously. In 1987 alone the Committee heard testimony on trade from 92 witnesses in 16 days of testimony. Moreover, the Committee's efforts this year are an extension of efforts to enact a trade bill in 1985 and 1986. In those years, the Committee held, respectively, 23 and 21 days of hearings and heard 297 and 263 witnesses. The bill, S. 490, as introduced represented a distillation of what the Committee had heard over the past two years, as reflected in the fact that among the 56 Senate cosponsors of the bill were 17 Members of the Finance Committee.

Authority To Negotiate Trade Agreements

The Committee has concluded that only by initiated far-ranging, multilateral trade negotiations can the United States hope to maintain its leadership in the world economy and shape this world economy to the benefit of its own citizens. The potential improvement in the standard of living in this country from a fully realized global economy is too geat to bypass. Moreover, no other nation appears to be in a position to provide the leadership necessary to realize this potential except the United States. Therefore, the Committee has concluded it is necessary and appropriate for the United States to provide that leadership.

For more than 50 years, the President's authority to negotiate trade agreements has been recognized as the cornerstone of an effective trade policy.

Presidential authority to negotiate trade agreements to reduce barriers to, and other distortions of, international trade was extended for eight years in the Trade Agreements Act of 1979, and this authority was expanded in the Omnibus Trade and Tariff Act of 1984 to cover tariff elimination or reduction in the context of bilateral trade negotiations. However, these extensions were neither part of any comprehensive policy nor the result of detailed study to determine overall U.S. trade strategy. They were interim, gap-filling efforts, and, in fact, they have not been used widely since 1979, when similar authority was used to approve the results of the Tokyo Round. Only two trade agreements have been presented to Congress under this authority since 1979—a technical change in the Tokyo Round Valuation Code and the bilateral trade agreement with Israel. Negotiations had not ripened to the point of legislation as the Committee considered this bill, regarding a possible bilateral trade agreement with Canada. Therefore, full-scale trade negotiating authority has not been enacted since 1974.

The President has requested a far-reaching extension of his authority, including the first permanent trade negotiating authority ever proposed in this country. The Committee has concluded that, as a practical matter, without some Congressional authority to negotiate, the President will be unable to negotiate successfully on trade, whatever his Constitutional prerogatives. Governments of other countries realize that under the unique form of government prescribed by the U.S. Constitution, trade agreements cannot be implemented without action of Congress. The President will be a more effective negotiator to the extent he can assure foreign governments that he is implementing a Congressional directive, since the Congress is more likely to approve action in accordance with what it has directed than action it had no part in formulating.

Therefore, legislation to authorize trade negotiations—including a reinvigoration of the domestic procedures for assuring that the underlying trade policies are properly formulated—is appropriate at this time.

In reestablishing Presidential authority to negotiate, however, the Committee has been concerned that several problems in the administration of laws authorizing trade negotiations be addressed firmly.

The first is that Presidents be discouraged from avoiding the trade policy making process established by Congress. Detailed procedures and administrative structures relating to trade negotiations enacted in the Trade Act of 1974 have deteriorated badly since the Tokyo Round was completed in 1979.

For example, the private sector advisory system created by Congress in 1974 and used effectively in the Tokyo Round to give the President advice on business realities actually failed to convene for the first few years of the current decade. At the current time, questions persistently arise, even among the advisors themselves, as to whether their advice is taken seriously and whether the advisory committees are well constituted. Similarly, the detailed procedures for Executive Branch consultation with the Congress have deteriorated since the end of the Tokyo Round, and the interagency process led by the Office of the USTR for formulating policies on trade to recommend to the President has been alternately discarded, avoided, and undercut. The Administration has even occasionally negotiated trade agreements or agreements affecting trade over the last six years completely outside statutory authorities.

The purpose of such procedures is to assure there is widespread support in the United States for the negotiating positions the President pursues. Without this support, trade policies of the executive branch have been weak, and other governments have exploited this weakness by playing on divisions within the American house. The United States cannot expect to provide international leadership under these circumstances.

The Committee has, therefore, reinvigorated the trade policy-making process by a number of provisions designed to assure these procedures are followed in spirit as well as in letter. In particular, the bill contains many provisions designed to assure that consultative mechanisms—especially close consultation with the Congress—are given new life. Under this bill, if trade negotiations are not making progress, or the Executive Branch is not carrying out its responsibilities to consult, Congress can change course and revoke the negotiating authority using streamlined legislative procedures.

Finally, the Committee has also carefully provided a variety of powers intended to give the President leverage in the new negotiations, including the power to switch to bilateral negotiations, and certain provisions of U.S. law which go into effect unless negotiations are successful.

The New Priorities

The Committee is also concerned about several overriding problems that are each a serious threat to the success of American trade policy. Without provisions to address these problems, the Committee's hopes for the upcoming negotiations probably cannot be realized. Therefore, they are of the utmost importance.

First, the enormous expansion of the international currency exchange system has important consequences for the trading system, and closer integration of international rules in this related area with international trade rules is urgently needed. Most importantly, countries should be discouraged from manipulating their currencies, contrary to economic fundamentals, for competitive gain. A special provision of the bill addresses this concern.

Second, it has become increasingly obvious that unfair trade practices are proliferating rather than declining, notwithstanding the efforts to identify and control such practices in the Tokyo Round. To respond, the bill substantially strengthens section 301 of the 1974 Act, the provision which authorizes the President to address unjustifiable, unreasonable and discriminatory foreign actions. The President is required to initiate certain such cases, to retaliate in cases unless certain limited exceptions apply or the cases are satisfactorily settled, and to apply the law to an expanding list of such practices, which seem to know no limit except the human imagination.

Of these new unfair trade practices, perhaps the most troublesome is the policy to run ever-larger trade surpluses through the creation of an interlocking web of informal and formal trade restrictions and export incentives. If these practices cannot soon be broken, the United States—itself now more deeply in debt than any other country—may be forced to run a trade surplus as a matter of policy. That should be incentive enough for other countries to discard such policies. The Committee has created a special negotiating priority for the current President to achieve agreements providing for the elimination of these practices by the end of his term.

Third, the Committee has also attempted to assure that the United States is prepared to take advantage of the world economy through changes in its domestic trade laws. The Committee recognizes that the trade situation has many causes, and that the underlying economic policies are a most important factor. The Committee views favorably the actions of the Administration in causing the revaluation of important foreign currencies against the dollar, which had been an important direct cause of the beginning of the current trade deficits. The Committee supports basic economic actions in this country and abroad to correct the current imbalance. The trade deficit is a complicated event, and it requires a many-faceted attack. However, it is clear that domestic trade laws must also be adjusted to the new realities of trade.

Finally, a high priority in American trade policy must be an affirmative Federal Government effort to promote positive adjustment to changes in the trade environment, particularly import pressures. Change is America's friend, not an enemy, but it must be harnessed and directed. Current law is inadequate in this regard, for it is too often a device to reduce adjustment pressures rather than a mechanism for promoting adjustment. In this respect, the bill asks more than current law does of domestic workers and industry who are on the front line in trade. Under the bill, they must show they will put forth the effort to improve their competitiveness in order to qualify for Federal help. But once they qualify, the bill gives them greater assurance of help—as long as they can show progress in improving their position.

III. PRINCIPAL FEATURES OF THE BILL

Title I. Authority to Negotiate Trade Agreements

The bill grants the President authority, effective January 4, 1988, and terminating January 3, 1994, to enter into multilateral trade agreements. This authority covers both tariff and non-tariff trade agreements. Trade agreements may reduce the duty on any particular article by not more than 50 percent of the rate of duty applicable on the date of enactment, with the exception of existing duty rates that do not exceed five percent ad valorem. Finally, the President must take into account the import-sensitive nature of the affected product or industry when considering whether to agree to the reduction or elimination of tariffs during trade negotiations.

The bill also provides separate authority for bilateral trade agreement negotiations on both tariff and non-tariff matters, effective through January 3, 1994. The provision retains from current law certain prerequisites to the authority to enter into bilateral agreements (a request for negotiations from the foreign country, consultation with Congressional Committees, and a ban against extending bilateral trade agreement benefits to countries that are not parties to such agreements.)

This bill creates new prerequisites to the President's entering into trade agreements. First, the President may enter into either a multilateral or bilateral agreement with a country that maintains state trading enterprises only if that country agrees that such enterprises will trade in accordance with commercial considerations and will afford U.S. firms adequate opportunity to compete for participation in the purchases and sales made by such enterprises. In addition, the agreement must meet the applicable trade negotiating objectives established by this bill; provide for the reciprocal exchange of obligations that are likely to be no less advantageous to the United States than to the other signatories; provide a reasonable likelihood that the United States can enforce the obligations of the agreement; and complement and reinforce, as much as possible, existing agreements.

The bill directs consultation by the President on a continuing basis with the Congress and the private sector Advisory Committee on Trade Negotiations (ACTN) on the status of negotiations and trade policy matters in general. The President and the ACTN must submit mid-term reports on the progress being made in trade negotiations to the Congress no later than January 3, 1991. This section also provides that a predominant number of the members of any trade negotiation advisory committee may not belong to the same political party.

Under the bill, Congress would retain the authority to review and implement all trade agreements—tariff and non-tariff, multilateral and bilateral—through the enactment of new laws. The bill provides expedited "fast-track" procedures for Congressional approval of trade agreements, as first established under the Trade Act of 1974. However, the bill adds several new procedures to the 1974 Act.

First, the bill requires that, before any trade agreement is entitled to fast-track consideration, the President must have submitted to the Congress a statement of U.S. trade policy. This statement must include, but is not limited to, a description of the President's policies with respect to domestic industries affected by imports and domestic industries that have a substantial potential for exporting. Once the statement is transmitted to Congress, the fast-track becomes available.

Second, the bill provides that the fast-track will not be available for any implementing bill after January 3, 1992, if Congress disapproves the extension because not enough tangible progress has been made in international trade negotiations to justify extension. Extension can be disapproved by resolution of either House of Congress, so long as the resolution is approved during the period between January 4, 1991, and July 1, 1991.

Finally, the bill provides for a "reverse" fast-track that can be used at any time the Administration fails to consult regularly with the Congress on trade policy generally. Using this two-house procedure, Congress can withdraw fast-track procedures by passing resolutions of disapproval within 60 days of each other.

The bill sets out both overall and specific principal negotiating objectives for U.S. trade negotiations.

The overall negotiating objectives are to obtain more open, fair, and equitable market access; the reduction or elimination of barriers and other trade-distorting practices; an appropriate overall balance between benefits and concessions within the agricultural, manufacturing, mining, and services sectors; and improved management of the new global economy.

There are 14 "principal" negotiating objectives, including such subjects as: Improving market opportunities for U.S. exports; improving the GATT; getting new rules on subsidies, including subsidies on input products; disciplining targeting and diversionary dumping; extending GATT to services, investment issues, intellectual property rights, and expansion of the 1979 International Government Procurement Code, which opens up some government procurement to foreign bidding; developing countries benefits; addressing the problems arising from persistent and excessive current account imbalances; developing greater GATT coordination with the IMF and the World Bank; enforcing GATT rules against non-commercial state trading practices and unfair trade concessions requirements; revising GATT with regard to agricultural trade; promoting worker rights; revising GATT rules on border tax adjustments; and others.

A special provision of the bill requires the President to ascertain, with regard to a country seeking to accede to a multilateral trade agreement, whether state trading enterprises account for a significant share of the international trade of that country or unduly burden or restrict the foreign trade of the United States or the U.S. economy. If so, the President would be required to withhold extension of the agreement to that country unless it agrees that its state trading enterprises will operate in accordance with commercial considerations or the President submits a bill to the Congress allowing extension of the agreement to that country and the bill is passed.

Another special provision requires bilateral currency negotiations when, in the course of any trade negotiation, the President determines that a foreign government participating in the negotiation both manipulates its exchange rate and maintains barriers to investment, discourages internal investment, or engages in a pattern of practices to prevent effective balance of payments adjustments or to gain an unfair trade advantage.

Title II. Enhancing Competitiveness

The bill includes changes to two major U.S. trade laws, the escape clause and trade adjustment assistance. In both cases the purpose is to make these laws more effective in promoting a world-competitive U.S. economy.

SUBTITLE A. POSITIVE ADJUSTMENT IN IMPORT-IMPACTED INDUSTRIES

The Committee bill makes major improvements in the import relief measures (the escape clause) provided under sections 201–203 of the Trade Act of 1974. Since 1951, the United States has provided special import relief, in the form of tariffs, quotas, tariff-rate quotas or other actions, to industries seriously injured by imports, without requiring the domestic industry to show that the imports are unfair. As this bill is written, the United States is importing about twice as much as it did seven years ago. While the Committee recognizes that requests for import protection will arise more frequently and that many more such requests may have to be granted under these circumstances, the Committee is concerned that escape clause protection be administered so as to promote adjustment and competitiveness. Meeting import competition should be a national priority. What the Committee has done is to use the escape clause as a tool for the domestic industry, local governments and the Federal Government to work together to promote competitiveness.

Under current law, while lip service is paid to promoting adjustment, whether to provide relief from imports is more often a political decision. If the ITC finds that a domestic industry is being seriously injured by increases in imports, it reports its finding to the President, together with its determination of the import relief necessary to prevent or remedy this serious injury. The President may then modify, adopt or reject the ITC's recommendation, based upon what he determines is in the national economic interest.

The Committee decided that, when the ITC finds serious injury to an industry, the ITC should determine the actions, if any, that are likely to assist the domestic industry in making a positive adjustment and recommend such actions to the President, rather than recommending import relief that will only prevent or remedy the injury being caused by imports. The Committee believes that a positive adjustment takes place when an industry is best able to compete successfully with imports after the actions end, or, alternatively, when an industry experiences the most orderly transfer of resources to other productive pursuits.

Because the objective of this subtitle is to promote a positive adjustment, the Committee is expanding the menu of actions that the President may take beyond the import relief measures in current law. As well as the import-restricting actions that the President is authorized to take under current law, the bill authorizes the President to direct the Secretaries of Labor or Commerce to certify workers and firms in the industry for trade adjustment assistance, to direct the Attorney General to review applications from the industry for exemption from U.S. antitrust law, to direct consideration of relief from Federal regulatory requirements, or to initiate multilateral negotiations to address conditions not susceptible to multilateral solution. While the Committee believes that import relief normally assists a positive adjustment to import competition, the Committee believes these measures can also contribute to a positive adjustment.

To assist the ITC in determining what actions will assist in a positive adjustment, the Committee is requiring an industry petitioning for action under this subtitle to submit a plan to promote positive adjustment to import competition. The bill also provides for firms, workers and other entities important to the industry's adjustment to make, and the ITC to seek from them, confidential commitments on steps that they intend to take to promote a positive adjustment. The Committee intends for the plan and the commitments to have a significant influence on the ITC's recommendation. The plan and commitments are strong indicators of whether a positive adjustment is likely because they demonstrate whether an industry is prepared to undertake the necessary efforts to make a positive adjustment. The Committee does not believe that Presidential action alone can accomplish this objective.

Because the Committee believes that the President should take actions that promote a positive adjustment, the bill limits those circumstances in which the President may reject the ITC's recommendations. The President would be required to take the actions recommended by the ITC, or substantially equivalent actions, in all cases unless the President determined that such actions would endanger the national security of the United States, or be a substantial cause of serious injury to a domestic industry that consumes the product of the industry that is being seriously injured by imports.

To ensure that actions under this subtitle accomplish their purpose, the Committee is expanding the provisions in current law that allow the ITC to monitor industry developments after actions are taken. The bill requires the President to review the industry's progress in making a positive adjustment and report to the President as often as every three years on developments. If the President determines that firms and workers in the domestic industry, taken as a whole, have not made an adequate effort to make a positive adjustment, then the President is authorized to modify or terminate the actions. The Committee believes that continuation of actions taken should be contingent on whether the industry is living up to the commitments it made before the President acted. Finally, under the bill, once import relief ends, it cannot be renewed for at least as long a period as the relief lasted. These procedures will help to accomplish the Committee's purpose of using U.S. trade law to contribute to the competitiveness of the U.S. economy.

SUBTITLE B. TRADE COMPETITIVENESS ASSISTANCE

The Committee is also making significant changes in the trade adjustment assistance program established under the Trade Act of 1974. The Committee is adopting a new "trade competitiveness assistance" program that will encourage workers who are unemployed because of import competition to learn the new skills necessary to find productive employment in a changing American economy. The new program adopted by the Committee will allow more workers to be eligible for trade adjustment assistance, but only if they enter training programs approved by the Secretary of Labor after they become unemployed.

Under current law, trade adjustment assistance for workers centers on income support for those who are certified as eligible. Qualified workers are entitled to a continuation of their unemployment insurance benefits for a combined total of 52 weeks of unemployment. While the Secretary of Labor may approve training for eligible workers, and provide additional benefits for up to 26 weeks while the worker is in such training, the worker is not required to undertake training to receive the basic 52-week benefit. Because the Committee believes that retraining is an important aspect of adjustment, it is requiring that workers undertake training programs in order to receive benefits, unless such training is not feasible or appropriate. Workers who are in or complete training would receive benefits for a combined total of 78 weeks.

Current law limits eligibility for trade adjustment assistance to firms and workers that produce articles directly competitive with the imported article. Because the Committee recognizes that the suppliers of products to firms directly impacted by imports can be equally disrupted by imports, the bill expands eligibility by including firms and workers that supply essential goods or services to firms directly impacted by imports.

The Committee proposes to pay for the new program through a small import fee. The Committee authorizes the President to enter into negotiations with our trading partners to agree that such a fee is appropriate to facilitate adjustment. The Committee believes the fee will be endorsed internationally because an open trading system depends upon a smooth adjustment process in domestic economies. The new program established by the bill is not to take effect until an agreement is reached with our trading partners or in three years, whichever is earlier.

The Committee is also making certain changes to trade adjustment assistance effective upon enactment of this Act. First, the Committee is facilitating the availability of trade adjustment assistance to the oil and gas industry and those workers and firms that provide essential goods and services to the oil and gas industry because the United States is experiencing major and increasing import pressure, localized in a few regions of the country, in the oil and gas industry. Second, the Committee is correcting a change in eligibility made by the Omnibus Budget Reconciliation Act of 1981 the effect of which was to eliminate or reduce trade adjustment assistance benefits for workers who are laid off and rehired, before being finally laid off, after they are certified as eligible for such assistance. The Committee bill is also clarifying certain aspects of trade adjustment assistance relating to the duration of training programs, eligibility for benefits during short breaks in training, and the commingling of training funds.

Finally, to improve the coordination of training and employment services provided under federal worker readjustment programs, the Committee is requiring that agreements entered into with States or State agencies provide for the coordination of training and employment services provided under the trade adjustment assistance program and Title III of the Job Training Partnership Act.

Title III. Unfair International Trade Practices Investigations

The Committee is concerned that American industry and workers have confidence that the Federal Government will move against unfair trade practices, whether they damage exports or result in increased imports that injure American industries.

SUBTITLE A. MANDATORY RESPONSES TO UNFAIR DISTORTIONS OF INTERNATIONAL TRADE

Current law—section 301 of the Trade Act of 1974—provides remedies against foreign unfair trade practices, including all the powers available to the President internationally, from negotiation right on through to retaliation. The Committee bill mandates using these powers except when some greater national interest overrides. The bill expands the annual National Trade Estimate to include an estimate of the value of additional goods and services of the United States and the value of additional foreign direct investment by U.S. persons that would have been exported to or invested in each foreign country during the calendar year in the absence of each country's unfair trade practices identified in the National Trade Estimate. The bill also requires the USTR, based on the National Trade Estimate, to identify a list of priority foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access to U.S. companies that rely on intellectual property protection.

The bill specifically requires the President annually to initiate negotiations to eliminate all acts, policies, or practices identified in the National Trade Estimate in countries, such as Japan, that show a consistent pattern of market distorting trade practices. The President is required to report to the Congress by December 31, 1988, on the progress of negotiations and on any evidence of improvement in U.S. exports as a result.

In certain cases, the bill requires initiation of section 301 investigations by the USTR. Merely initiating such an investigation can give the President enormous leverage in negotiating an end to a foreign unfair trade practice. Mandating such initiation assumes an active, ongoing program of attacking such practices, and discourages foreign governments from believing they can avoid section 301 action through political or even personal arguments to the President.

Under the bill, the USTR must annually start investigations of those acts, policies, and practices identified in the National Trade Estimate that, if reduced or eliminated, will result in the greatest expansion of U.S. exports, either directly or through the establishment of a beneficial precedent. Mandatory initiation of such a case would not be required if the USTR, after consultation with a majority of the representatives of the industry, determines that initiation would be detrimental to other efforts being made to eliminate the practice in question.

This section also requires the USTR to initiate cases under section 301 of the Trade Act of 1974 with regard to any country identified under section 302 of this bill as a priority country denying intellectual property rights, within 30 days of such identification in the National Trade Estimate. Self-initiation is not required if it would be detrimental to U.S. economic interests or the foreign country has already entered into negotiations to remedy the acts, policies or practices. A decision not to initiate such a case on intellectual property must be reported to the Congress.

The Committee is also concerned that the President should be required to act in most section 301 cases. This will encourage the favorable settlement of most cases, reduce the delay that now occurs in most cases, strengthen the international disputes resolution system, and improve the outlook for new trade negotiations. The bottom line must be that the President will not tolerate unfair trade practices.

The bill provides that the USTR is required to make a formal determination of whether the acts, policies or practices investigated are actionable under section 301, and, if so, to make a recommendation to the President for action. In most cases the determination is to be made within nine months of initiation of the investigation, except with regard to investigations involving export targeting and those cases involving intellectual property rights self-initiated by USTR against priority countries, as to which the deadline is six months. The deadline for the intellectual-property-based cases can be extended an additional three months if complex issues are involved or the foreign country is taking actions to provide adequate and effective intellectual property rights. USTR's recommendation for action must be made no later than 30 days before the applicable deadline for Presidential action in the particular investigation.

The bill further requires the President, if the USTR makes an affirmative determination of an unfair practice, to take whatever actions permitted by section 301 are necessary to enforce all rights and eliminate or offset the practices that were the subject of the affirmative determination. Deadlines for Presidential action are provided: Thirty days after the USTR determination in most USTR-initiated intellectual property cases; 15 months after the date of initiation of the investigation in most other cases, extendable for a maximum of two additional 60-day periods if the President certifies to the Congress that progress is being made to enforce the U.S. rights or eliminate the practice involved in the case. In cases involving a trade agreement in which the USTR has referred the matter to the formal dispute settlement procedures specified in the agreement, the deadline is 19 months, or six months after the issuance of a ruling in the dispute settlement procedure, whichever is first.

The bill provides five limited exceptions allowing the President not to take action. These exceptions are as follows:

(1) The decision resulting from a dispute resolution proceeding required under an applicable trade agreement conflicts with the USTR determination that the foreign practice is unfair.

(2) The United States and the foreign country enter into a settlement of the dispute and the settlement is agreed to by a majority of the representatives of the domestic industry that would benefit from the action.

(3) The action would cause serious harm to the national security.

(4) The enforcement of the rights or the elimination of the unfair practice is impossible and the foreign country has agreed to provide the United States with compensating trade benefits in the same economic sector of which the affected domestic industry is a part (or another sector as closely related as possible to that sector).

(5) The foreign unfair practice is an "unreasonable" or "discriminatory" practice, or a self-initiated intellectual property rights case, and the President certifies that the elimination of the practice is impossible and that taking action would not be in the national economic interest.

The bill also establishes a system for terminating action under section 301. Retaliatory action would terminate at the end of four years unless the petitioner or any representative of the domestic industry requests continuance during the last 60 days of the four-year period. If continuance is requested, the USTR is to conduct a review of the effectiveness of the action and of other action that could be taken and issue a report to the President and the Congress on the results of the review, including any recommendations for Presidential action. The President may also act at any time to modify or terminate retaliatory action if it is found to violate U.S. obligations under a trade agreement or the burden or restriction on U.S. commerce caused by the foreign practice has increased or decreased.

Finally, the bill provides that if the President opts not to take retaliatory action with regard to foreign export targeting by reason of the "national economic interest" exception, the USTR must undertake negotiations with the country to obtain an agreement to eliminate or fully offset the effects of the targeting or compensate the United States. If negotiations are unsuccessful, the President must establish a panel to recommend non-trade measures to promote the competitiveness of the affected domestic industry.

The bill also makes a number of miscellaneous amendments to section 301 of the Trade Act of 1974 to clarify that it applies to new unfair trade practices that have arisen in recent years and for other purposes.

The bill clarifies that, for unjustifiable, unreasonable, or discriminatory practices that must burden or restrict U.S. commerce in order to be actionable under section 301, the burden or restriction may be on U.S. trade with third countries. It further clarifies that the actions the President may take include a settlement that fully offsets or eliminates any burden or restriction on U.S. commerce. The President is also specifically authorized to withdraw or not proclaim beneficiary status to a developing country or to deny duty-free treatment to any eligible product or products of a beneficiary developing country under the GSP as a section 301 action.

This section also specifically defines as "unreasonable" practices actionable under section 301 the following:

(1) The toleration by a government of systematic anti-competitive activities by private firms or among private firms that have the effect of restricting, on a non-commercial basis, access of U.S. goods and services to purchasing by such firms.

(2) Export targeting, defined as any government plan or scheme consisting of a combination of coordinated actions

(whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist such enterprise, industry, or group to become more competitive in the export of any class or kind of merchandise.

(3) The requirement that intellectual property be licensed to a foreign country or to any firm in the country, or that technical information be submitted to the country, as a condition of doing business in that country.

(4) The denial of worker rights through a persistent pattern of conduct that denies workers the right of association, denies workers the right to organize and bargain collectively, permits any form of forced or compulsory labor, fails to provide a minimum age for the employment of children, or fails to provide standards for minimum wages, hours or work, and occupational safety and health of workers. (The USTR would be permitted to find any of these practices not unreasonable if he finds that (a) the practices are not inconsistent with the foreign country's level of economic development or (b) the foreign country has taken, or is taking, steps that demonstrate a significant and measurable overall advancement to afford these rights and standards throughout the country.)

In determining whether a foreign practice is unreasonable, the Committee has accepted the Administration's suggestion that reciprocal opportunities in the United States for foreign nationals or firms must be taken into account as appropriate, and consideration should be given to the denial by the foreign government of access to the market in that country and opportunities within that market generally reciprocating those available in the United States.

The bill also defines the term "discriminatory" to include trading by a state-owned enterprise on other than a commercial basis. It further makes actionable as a practice denying benefits to the United States under a trade agreement any practice that nullifies or impairs the objectives of a trade agreement and unfair trade concessions requirements. The bill permits the President to employ the Export Enhancement Program created in the 1985 Farm Act to counter unfair trade practices involving agricultural commodities, if he has reason to believe a practice may impair or threaten to impair sales of U.S. agricultural commodities or products made from agricultural commodities in the markets of any country and the provision of surplus commodities under the program would be an appropriate action to offset the foreign practice. This action may be revoked if the USTR ultimately determines that the foreign practice is not actionable under section 301 or the practice is eliminated or fully offset.

Finally, the bill expands existing authority to compensate foreign governments to include compensation for actions taken under section 301, but only if the President determines that compensation is necessary to meet the international obligations of the United States.

SUBTITLE B. IMPROVEMENT IN THE ENFORCEMENT OF ANTIDUMPING AND COUNTERVAILING DUTIES

The antidumping and countervailing duty laws were last comprehensively amended in 1979, in implementing the Tokyo Round agreements on these subjects. In general, these changes have worked well, but the Committee is concerned that foreign exporters have developed methods of circumventing and evading these laws and related programs, such as the President's program controlling the importation of steel. Therefore, the Committee has agreed to a number of changes in current law to assure its smooth and effective operation, as follows:

(1) *Critical Circumstances.*—To provide meaningful relief against massive surges of dumped or subsidized imports over a short period of time, the Committee bill strengthens the provisions in current law that allow antidumping or countervailing duties to be imposed on imports entered during the 90 days prior to a preliminary determination by the Department of Commerce regarding dumping or subsidization. The bill authorizes the Commerce Department to request the Customs Service to compile statistics on an expedited basis regarding the value and volume of the imports subject to investigation. The bill also clarifies that the Commerce Department has the authority to make a preliminary determination of critical circumstances prior to its preliminary determination regarding dumping or subsidization. Finally, the bill clarifies the determination that the ITC is required to make regarding critical circumstances and focuses the ITC's determination on whether there have been efforts to circumvent a potential antidumping or countervailing duty or whether foreign economic conditions are leading to massive surges in imports.

(2) *Sham Transactions.*—The Committee bill provides that, in certain circumstances, the U.S. purchaser, rather than the person who is actually importing the goods, shall be treated as the importer of record solely liable for the payment of antidumping duties. The provision would apply when the Commerce Department determines that a sham transaction has been set up in order to absorb antidumping duties.

(3) *Actions to Prevent Circumvention and Diversion.*—The Committee bill establishes a three-part program to deal with efforts to circumvent antidumping or countervailing duties through processing operations in the United States or third countries. First, the bill establishes a procedure for a selective monitoring program of imports of products that may incorporate dumped or subsidized inputs. Information gathered by the ITC in monitoring would alert the Commerce Department to instances of input dumping or circumvention of antidumping or countervailing duty orders. The second element of this program authorizes the Commerce Department to expand the scope of an antidumping or countervailing duty order when such orders are being circumvented through processing operations in the United States or third countries. This provision also creates a presumption that articles subject to minor alterations are within the scope of an order. Finally, the Committee

bill provides explicit authority to strengthen the enforcement of the bilateral arrangements with steel-exporting countries when steel imports have been transformed in a country not a party to such an agreement prior to entry into the United States.

(4) *Monitoring of Multiple Dumping Offenders.*—The Committee bill establishes new procedures for monitoring imports within a specific product category when a foreign manufacturer is repeatedly found to be dumping similar products in the United States. Information gathered in monitoring will be used in expedited antidumping investigations when the Commerce Department believes that a formal investigation is warranted.

(5) *Dumping by Nonmarket Economy Countries.*—The Committee bill provides a new methodology for determining whether a nonmarket economy country is selling at less than fair value in the United States. Rather than using a surrogate country to determine fair value for products from nonmarket economy countries, as required under current law, the Committee bill directs the Commerce Department to use the average selling price of comparable merchandise produced in the eligible market economy country accounting for the largest volume of U.S. imports of such merchandise as the basis for determining the fair value of the imports from the nonmarket economy country. The bill provides an alternative methodology based on factors of production when imports from the benchmark country are being sold at less than fair value. The new methodology will be more administrable and reliable than current law.

(6) *Processed Agricultural Products.*—The Committee bill clarifies that the ITC may consider growers or producers of raw agricultural products as part of the domestic industry producing a processed agricultural product if two conditions exist: (a) The processed product is produced from the raw agricultural product through a single continuous line of production, and (b) there is a substantial coincidence of economic interest between the growers and the processors. The bill also expands the definition of "interested party" to include a coalition or trade association which is representative both of growers and processors of a processed agricultural product.

The Committee bill provides as an additional factor for the ITC to consider in determining whether there is a threat of material injury by reason of dumped or subsidized imports the likelihood of product-shifting in cases involving imports of raw and processed agricultural products.

(7) *Access to Information.*—The Committee bill amends procedures for disclosure of confidential information to require the ITC to release information under administrative protective order.

(8) *Certification of Submissions.*—The Committee bill requires submissions from parties involved in an antidumping or countervailing duty proceeding to be certified as to their accuracy.

(9) *Definition of Material Injury.*—The Committee bill clarifies that the ITC is required, in its material injury analysis, to

consider each of the specified factors in every case, and to explain its analysis of each factor so considered. It also clarifies that, in examining the impact of imports on domestic producers, no single factor should be dispositive.

The bill amends the list of factors the ITC is to examine to change the term "price undercutting" to "price underselling." It also amends the definition of the domestic "industry" to include only domestic operations of U.S. producers for purposes of determining material injury.

(10) *Threat of Material Injury.*—The Committee bill provides additional factors for the ITC to consider in determining whether there is a threat of material injury: (a) The impact of imports on existing efforts of the domestic industry to develop the next generation of a product; and (b) dumping of the subject imports in the world market as evidenced by antidumping findings in other GATT countries.

(11) *Limited Application of 90-Day Review Authority.*—The Committee bill limits the provisions of current law that allow for expedited reviews of antidumping determinations during the 90 days following the issuance of a final antidumping duty order. Under the bill, such reviews would be limited to orders in which the original investigation was considered under a normal timeframe and would only be done if the foreign exporter presents adequate evidence that the anticipated dumping margin would decrease, based on representative sales during the period of review.

(12) *Application of Antidumping and Countervailing Duties to Governmental Importations.*—The Committee bill clarifies that importations by, or for the use of, the United States Government shall be subject to antidumping and countervailing duties, when such duties apply. This rule shall not apply where it would conflict with existing Department of Defense Memoranda of Understanding or where the market for the imports is normally limited to governments.

(13) *Determination of Subsidies.*—The Committee bill adds a special rule to the definition of a subsidy under current law to clarify that the Commerce Department must determine whether a bounty grant, or subsidy in fact is provided to a specific industry rather than finding a nominal availability of the subsidy to all industries as a basis for determining that the subsidy is not provided to a specific industry.

(14) *Revocation of Status as a Country under the Agreement.*—When a foreign country accepts the obligations of the GATT Agreement on Subsidies and Countervailing Measures, the United States requires the ITC to determine whether a domestic industry is being injured by imports from such country before applying countervailing duties to offset a subsidy provided by that country. The Committee bill authorizes the USTR to revoke such status for a country if the country does not live up to the obligations accepted.

(15) *Leases under the Countervailing Duty Law.*—The Committee bill amends countervailing duty law to require all forms of leases to be treated as sales under the countervailing duty law.

(16) *Fictitious Markets.*—Under current law, the Commerce Department is not to take into account in determining foreign market value sales that are intended to establish a fictitious market. To highlight one form of fictitious market, the Committee bill states the Commerce Department may consider different price movements of different forms of merchandise subject to an antidumping order as evidence of a fictitious market if such movements reduce dumping margins.

Title IV. Intellectual Property Rights

SUBTITLE A. INTELLECTUAL PROPERTY REMEDIES

The bill amends section 337 of the Tariff Act of 1930, which provides for relief against unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale, if the effect or tendency of such actions is to destroy or substantially injure an efficiently and economically operated industry in the United States. The bill would make the following changes in section 337:

(1) Eliminates the injury requirement in certain intellectual property rights cases. Retains the requirement that a domestic industry exist, but with an expanded definition.

(2) Specifically authorizes the ITC to terminate cases on the basis of settlements or consent orders.

(3) Shortens the time period for issuance of temporary exclusion orders to 90 days after initiation (extension of 60 days permitted for more complicated cases).

(4) Clarifies that cease and desist orders may be issued "in addition to or in lieu of" exclusion orders and increases the penalty for violations of such orders to "$100,000 or the domestic value of the articles."

(5) Provides for the ITC to use default procedures against persons who have been served with notice of proceedings and fail to appear to answer the complaint in cases in which the complainant seeks relief limited to that person.

(6) Permits the ITC to promulgate rules prescribing sanctions for abuse of discovery and abuse of process.

(7) Provides for procedures for the ITC to order, and the Customs Service to enforce, the seizure and forfeiture of articles imported in violation of seciotn 337.

(8) Provides specific authority for the ITC to modify or rescind an outstanding remedial order on the basis of new evidence or on other grounds permissible under the Federal Rules of Civil Proceure, and places the burden of proof on the party previously found to be in violation who petitions for the modification or rescission.

(9) Extends the listing of U.S. Government importations that are exempt from exclusion orders.

(10) Provides procedures for treating confidential information submitted in section 337 cases.

SUBTITLE B. ACCESS TO TECHNOLOGY

The Committee recognizes the new world economy involves the exchange of more than goods. Thus, consistent with its provisions on such international exchanges of value as currency, investment, and intellectual property, the Committee is concerned that U.S. firms have at least as much access to foreign technology as foreign producers have to U.S. technology. Thus, the bill would:

(1) Require the USTR to continually monitor the transfer of technology between the United States and foreign countries, and prepare an annual report on such transfers.

(2) Require the Secretary of Commerce to designate a Foreign Commercial Service officer in each foreign country to be responsible for monitoring and reporting on the status of the intellectual property system in that country.

(3) Amend the Foreign Assistance Act of 1961 to authorize the President to furnish assistance for programs to aid less developed countries in developing and implementing adequate intellectual property laws.

(4) Require the Secretary of Commerce to establish an institute to train individuals of developing nations in the management and technical skills necessary to carry out a system for protecting intellectual property rights.

Title V. National Security

Over recent years, concern has increased that surges of increased imports would threaten the national security. The Committee has, therefore, included provisions to assure the President is required to act in a timely manner in such cases.

The bill amends section 232 of the Trade Expansion Act of 1962 (U.S.C. 1862) to shorten the period of time for the Secretary of Commerce to report his findings and recommendations to six months from initiation of such investigations, and to shorten the period of time for the President to decide whether to take action in such cases to 90 days after the Secretary's report. The bill also requires the Secretary of Defense to make a defense needs assessment with respect to the article under investigation. Finally, the bill further amends section 232 to provide explicit authority for the President to enforce the voluntary restraint agreements negotiated as a result of the section 232 investigation on machine tools and to undertake and enforce future voluntary restraint agreements under this authority.

The bill also contains a special section on energy security. It requires the President to establish a national oil import ceiling, which may not exceed 50 percent of U.S. consumption, as a level beyond which imports of foreign crude oil and oil product will not be allowed to rise because of the danger an excessive dependence on foreign oil would present. If the ceiling level will be exceeded within a three-year period, then the President within 90 days must submit an energy production and oil security policy to the Congress, which may use all powers available to the President under section 232. The policy will be effective unless Congressionally disapproved within 90 session days.

Title VI. Formulation of U.S. Trade Policy

Trade Impact Statements.—The Committee bill requires that, before taking any major action that may affect international trade and subject to certain exceptions, the head of each department and agency of the Federal Government study the potential impact such action will have on the international trade of the United States and the ability of U.S. firms to compete in foreign markets, prepare a detailed statement of such study, and make the statement available to the public.

National Trade Council.—The bill eliminates the Trade Policy Committee and establishes in the Executive Office of the President the National Trade Council. The purpose of establishing the National Trade Council is to improve U.S. international trade policy by increasing trade policy coordination in the Federal Government.

National Trade Data Bank.—The Committee bill establishes a National Trade Data Committee, chaired by the Chairman of the ITC and consisting of the USTR, the Commissioners of the ITC, the Director of Central Intelligence, and the Secretaries of Commerce, Agriculture, and State. The functions of the Committee shall be to establish and maintain a National Trade Data Bank and to disseminate such information to U.S. industry.

Title VII. Authorization of Appropriations for Trade Agencies

The bill authorizes FY 1988 appropriations to the International Trade Commission of $35,386,000; to the U.S. Customs Service of $1,035,211,00; and to the U.S. Trade Representative of $15,248,000.

Title VIII. Tariff Provisions

SUBTITLE A. AMENDMENTS TO THE TARIFF SCHEDULES OF THE UNITED STATES

Section 801.—This section states that whenever an amendment or repeal in this subtitle is expressed in terms of an amendment to, or repeal of, a schedule, headnote, item, the Appendix, or other provision, the reference is to the Tariff Schedules of the United States (19 U.S.C. 1202).

Section 802.—This section contains a provison amending schedule 3 of the TSUS to provide for additional statistical annotations on woven fabrics of man-made fibers.

Section 803.—This section contains a provision to change the tariff treatment with respect to naphtha and motor fuel blending stocks.

Section 804.—This section contains a provision eliminating the special marking requirements for imported watches and clocks and components thereof.

Section 805.—This section contains a provision relating to the tariff classification of slabs of iron or steel.

Section 806.—This section contains a provision relating to the tariff classification of certain work gloves.

Section 807.—This section contains a provision making permanent the temporary "free" rate of duty on imported hatters' fur which expired on December 31, 1985.

Section 808.—This section contains a provision relating to the tariff classification of extracorporeal shock wave lithotripters.

Section 809.—This section contains a provision relating to the tariff classification of salted and dried plums.

Section 810.—This section contains a provision which amends Subpart B of part 1 of schedule 4 of the TSUS to provide for the specific listing of certain benzenoid chemicals with other listed chemicals.

Section 811.—This section contains a provision regarding the classification of television apparatus and parts thereof.

Section 821.—This section contains a provision continuing through December 31, 1990 the suspension of the column 1 ratesof duty on color couplers and coupler intermediates used in the manufacture of photographic sensitized material.

Section 822.—This section contains a provision suspending through December 31, 1990 the duty on P-sulfobenzoic acid, potassium salt (potassium 4-sulfobenzoate).

Section 823.—This section contains a provision temporarily suspending through December 31, 1990 the duty on 2,2'-oxamidobis-[ethyl 3-(3,5 di-tert-butyl-4-hydroxyphenyl)propionate].

Section 824.—This section contains a provision temporarily suspending through December 31, 1990 the duty on 2,4-dichloro-5-sulfamoylbenzoic acid (also known as lasamid).

Section 825.—This section contains a provision temporarily suspending through December 31, 1990 the duty on derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)phenyl]acetamide.

Section 826.—This section contains a provision suspending through October 31, 1992 the duty on certain knitwear fabricated in Guam.

Section 827.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate duty on 3,5-dinitro-o-toluamide.

Section 828.—This section contains a provision suspending through December 31, 1990 the column 1 rate duty on secondary-butyl chloride.

Section 829.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on imports of nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate.

Section 830.—This section contains a provision permitting free entry into the United States of the personal effects, equipment, and other related articles of foreign participants, officials, and other accredited members of delegations involved in the games of the Tenth Pan American Games to be held in Indianapolis, Indiana, in 1987.

Section 831.—This section contains a provision suspending through December 31, 1990 the column 1 rate of duty on carding and spinning machines specially designed for wool.

Section 832.—This section contains a provision temporarily suspending through December 31, 1990, the column 1 rate of duty on 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol), dinocap, and certain mixtures.

Section 833.—This section contains a provision modifying the article description, and extending through December 31, 1990 the temporary duty suspension on nicotine resins.

Section 834.—This section contains a provision temporarily suspending the column 1 rate of duty on certain types of silk yarn.

Section 835.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on imports of 1-(4-(1,1-diemethylethyl)phenyl)-4-(hydroxydiphenylmethyl-1-piperidinyl)-1-butanone (also known as terfenadone).

Section 836.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on fluazifop-p-butyl.

Section 837.—This section contains a provision temporarily suspending through December 31, 1990 the duty on certain parts of indirect process electrostatic copying machines.

Section 838.—This section contains a provision suspending through December 31, 1987 the duty for extracorporeal shock wave lithotripters imported by non-profit institutions.

Section 839.—This section contains a provision temporarily suspending through December 31, 1990 the duty on certain plastic sheeting.

Section 840.—This section contains a provision suspending December 31, 1990 the column 1 rate duty on certain specialty yarns of manmade fibers used in the manufacture of wigs for dolls.

Section 841.—This section contains a provision suspending through December 31, 1990 the column 1 rate of duty on imported 1-(3-sulfopropyl) pyridinium hydroxide.

Section 842.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on cross-linked polyvinylbenzyltrimethylammonium chloride (cholestyramine resin USP).

Section 843.—This section contains a provision suspending through December 31, 1990 the column 1 rate of duty for methylene blue to be used as a process stabilizer in the manufacture of organic chemicals.

Section 844.—This section contains a provision suspending through December 31, 1990 the column 1 rate of duty on imports of 1,5 naphthalene diisocyanate.

Section 845.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on 3-amino-3-methyl-1-butyne.

Section 846.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty for dicyclohexylbenzothiazylsulfenamide (DCBS).

Section 847.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on d-6-methoxy-a-methyl-2-naphthaleneacetic acid and its sodium salt.

Section 848.—This section contains a provision suspending through December 31, 1990 the column 1 rate of duty on jacquard cards and jacquard heads.

Section 849 through 854.—These sections contain provisions temporarily suspending the duty for the following chemicals: 2,2-bis-(cyanatophenyl), phenylmethylaminopyrazole, benzethonium chloride, metaldehyde, and paraldehyde USP.

Section 855.—This section contains a provision suspending temporarily through December 31, 1990 the column 1 rate of duty for cyclosporine.

Section 856.—This section contains a provision lowering temporarily through December 31, 1990 the column 1 rate of duty on glass inners designed for vacuum flasks.

Section 857.—This section contains a provision temporarily suspending the duty on certain benzenoid dye intermediates.

Section 858.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on tungsten ore.

Section 859.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty for 4-chloro-2,5-dimethoxyaniline (also known as chlor amino base).

Section 860.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on 2-[(3-Nitrophenyl)sulfonyl] ethanol (also called nitro sulfon B).

Sections 861 through 864.—These sections contain provisions temporarily suspending through December 31, 1990 the applicable duty on 4-chloro-2-nitroaniline, aminosulfon BR; acetquinone base; and diaminophenetolesulfate.

Section 865.—This section contains a provision temporarily suspending through October 31, 1987 the column 1 rate of duty for certain mixtures of cross-linked sodium polyacrylate polymers.

Section 866.—This section contains a provision temporarily suspending the column 1 rate of duty for diphenyl guanidine and di-ortho-tolyl guanidine.

Section 867.—This section contains a provision temporarily suspending through December 31, 1990 the duty on N-ethyl ortho/para toluenesulfonamide.

Section 868.—This section contains a provision temporarily suspending through December 31, 1990 the applicable duty on 6-amino-1-naphthol-3-sulfonic acid (J Acid).

Section 869.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty for mixtures of maneb, zineb, mancozeb, and metiram, stabilizer, and application adjuvants.

Section 870.—This section contains a provision temporarily suspending through December 31, 1990 the duty on beta naphthol.

Section 871.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on sethoxydim.

Section 872.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty on 3-ethylamino-p-cresol.

Section 873.—This section contains a provision temporarily suspending through December 31, 1990 the duty on imports of 1 amino-2 chloro-4 hydroxy anthraquinone (rosachloride lumps).

Section 874.—This section contains a provision temporarily suspending through December 31, 1990 the duty on C-Amines.

Section 875.—This section contains a provision temporarily suspending through December 31, 1990 the duty on imports of Diamino Imid SP.

Section 876.—This section contains a provision temporarily suspending through December 31, 1990 the column 1 rate of duty applicable to imports of certain stuffed or filled toy figures.

Section 877.—This section contains a provision temporarily suspending through December 31, 1990 the duty on tetraaminobiphenyl.

Section 878.—This section contains a provision temporarily suspending through December 31, 1989 the column 1 rate of duty on certain transparent, non-glazed, glass ceramic kitchenware.

Sections 879, 880, 883(a)(11), and 883(a)(12).—These sections contain provisions regarding temporary duty-free treatment of needles for hosiery knitting machines and certain hosiery knitting machines.

Section 881.—This section contains a provision suspending the duty on certain bicycle parts and continuing the present treatment of bicycle component parts within foreign trade zones.

Section 882.—This section contains a provision temporarily suspending through December 31, 1990 the duty on mixtures of 1,2-dimethyl 1-3,5-diphenylpyrazolium methyl sulfate (difenzoquat methyl sulfate).

Section 883(a)(1).—This section contains a provision extending through December 31, 1990 the duty suspension for certain mixtures of hot red peppers and salt.

Section 883(a)(2).—This section contains a provision extending through December 31, 1990 the duty suspension on fresh cantaloupes imported at certain times, and for other purposes.

Section 883(a)(3).—This section contains a provision extending through December 31, 1990 the duty suspension on coarse wools (defined as finer than 44s but no finer than 46s).

Section 883(a)(4).—This section contains a provision extending through December 31, 1990 the temporary duty-free treatment of certain needlecraft display models.

Section 883(a)(5).—This section contains a provision extending through December 31, 1990 the temporary column 1 suspension of duty for triphenyl phosphate.

Section 883(a)(6).—This section contains a provision extending through December 31, 1990 the temporary suspension of the column 1 rate of duty for isomeric mixtures of ethylbiphenyl.

Section 883(a)(7).—This section contains a provision extending through December 31, 1990 the suspension of the column 1 rate of duty for sulfapyridine.

Section 883(a)(8).—This section contains a provision extending through December 31, 1990 the suspension of column 1 rate of duties on synthetic rutile.

Section 883(a)(9).—This section contains a provision renewing through December 31, 1990 the previous suspension of the column 1 rate of duty on certain clock radios.

Section 883(a)(10).—This section contains a provision temporarily extending through December 31, 1990 the duty-free treatment of column 1 imports of machines designed for heat-set, stretch texturing of continuous man-made fibers.

Section 883(a)(13).—This section contains a provision extending through December 31, 1990 the temporary suspension of the column 1 rate of duty on certain enumerated small toys and games.

Section 883(a)(14).—This section contains a provision extending through December 31, 1990 the temporary duty suspension on stuffed dolls, certain toy figures, and the skins thereof.

Section 883(a)(15).—This section contains a provision temporarily renewing through December 31, 1990 the suspension of the column 1 rate of duty on umbrella frames.

Section 883(b)(1).—This section contains a provision extending through December 31, 1990 the existing suspension of duty on crude feathers and down.

Section 883(b)(2).—This section contains a provision extending through December 31, 1990 the current suspension of the column 1 rate of duty on certain menthol feedstocks.

Section 883(b)(3).—This section contains a provision extending through December 31, 1990 the existing suspension of duty on flecainide acetate.

Section 883(b)(4).—This section contains a provision extending for an additional three-year period the duty-free treatment of o-benzyl-p-chlorophenol.

Section 883(b)(5).—This section contains a provision extending through December 31, 1990, the existing suspension of duty on 2-(4-aminophenyl)-6-methylbenzothiazole-7-sulfonic acid.

Section 894.—This section identifies effective dates and periods of retroactive application for the provisions in Title VIII.

Section 895.—This section contains a provision for the duty-free entry of certain structures and parts for use in the W.M. Keck Observatory Project, Mauna Kea, Hawaii.

Section 896.—This section contains a provision extending the filing period for reliquidation of certain entries.

Section 897.—This section contains a provision relating to the application of the drawback provisions of the Tariff Act of 1930 to certain importations of raw cane sugar.

Section 898.—This section contains a provision regarding the duty-free treatment of ethyl alcohol and mixtures for fuel use.

Title IX. Miscellaneous Trade Provisions

SUBTITLE A. TELECOMMUNICATIONS TRADE

(1) *Investigation of Foreign Trade Barriers.*—Requires the USTR to complete an investigation within four months of the date of enactment to identify (1) all acts, policies and practices in foreign telecommunications markets that deny to U.S. firms competitive opportunities that are substantially equivalent to those available in the United States and (2) which of such acts, policies or practices denies or impairs benefits to which the United States is entitled under trade agreements.

(2) *Action by the President in Response to Investigation.*—Directs the President, based on the USTR investigation, to enter into negotiations with foreign countries whose trade barriers deny substantially equivalent opportunities to U.S. firms to achieve certain negotiating objectives. In the event the President is unable to obtain an agreement to meet the negotiating objectives within 18 months of the date of enactment, he is directed to take action to remove the imbalance of competitive opportunities. Legislative approval,

on a "fast-track" basis, would be required of any agreements entered into or any actions taken.

(3) *Action by USTR in Response to Investigation.*—Directs the USTR, within 15 days of the conclusion of its investigation, to retaliate against foreign countries that are identified as not being in compliance with a trade agreement related to telecommunications. Requires the USTR to conduct an annual review of foreign compliance with telecommunications agreements and of foreign market-restricting practices, and to take action, if necessary.

(4) *Consultations.*—Requires the President and the USTR to consult in the course of investigations with relevant Federal agencies and private sector advisory committees, and with Congressional Committees on a regular basis.

(5) *General Trade Agreement Authority.*—Authorizes the President to enter into trade agreements to achieve the objectives of this subtitle during the three-year period following enactment.

(6) *Compensation Authority.*—Gives the President authority to compensate a foreign country with respect to actions the President has taken to restore the balance of competitive opportunities. Similar authority is given the USTR in the event retaliation is subsequently found to be inconsistent with U.S. international obligations or when action taken against one country also affects a country against which action is not taken.

(7) *Action to Ensure Compliance with FCC Regulations.*—Requires the collection and dissemination of information related to compliance of imported products with FCC regulations.

(8) *Report by the Secretary of Commerce.*—Requires the Secretary of Commerce to report to Congress within six months after the date of enactment, and every two years thereafter, on the impact of U.S. domestic policies and practices on the growth and international competitiveness of the U.S. telecommunications industry.

(9) *International Obligations.*—Provides that nothing in this subtitle is to be construed to require action by the President that is inconsistent with the international legal obligations of the United States.

SUBTITLE B. CUSTOMS PROVISIONS

(1) *Duty-Free Sales Enterprises.*—Establishes a comprehensive statutory framework for the regulation and operation of duty-free sales enterprises.

(2) *Extension of the International Coffee Agreement Act of 1980.*—Extends U.S. participation in the International Coffee Agreement, effective January 1, 1987, through October 1, 1989.

(3) *Enforcement of the Restrictions Against Imported Pornography.*—Amends procedural requirements for bringing proceedings against imports of pornography.

(4) *Customs User Fees.*—Clarifies that customs user fees are to be treated as receipts offsetting expenditures for salaries and expenses for commercial operations of the Customs Service, and that all fees collected are to be deposited in the same account dedicated to this purpose.

(5) *Prohibition of the Importation of Certain Articles Produced by Convict or Forced Labor in the Soviet Union.*—Prohibits imports of

seven categories of imported goods from the Soviet Union that are produced by convict or forced labor.

(6) *Tare on Crude Oil and Petroleum Products.*—Amends section 507 of the Tariff Act of 1930 to permit an allowance for all detectable moisture and impurities present in crude oil and petroleum product imports.

(7) *Eligible Articles Under the GSP.*—Amends the eligibility of watches under the GSP program.

(8) *Customs Bond Cancellation Standards.*—Requires the Secretary of the Treasury to publish guidelines establishing standards for setting the terms and conditions for the cancellation of bonds.

(9) *Marking of Imported Mushrooms.*—Provides that imported preserved mushrooms would not be in compliance with the marking provisions of section 304 of the Tariff Act of 1930 unless the containers indicate in English the country in which the mushrooms were grown.

(10) *Customs Services At Pontiac/Oakland, Michigan Airport.*—Specifies that the Pontiac/Oakland, Michigan airport would become a reimbursable customs port.

SUBTITLE C. ADMINISTRATIVE PROCEDURE FOR NON-CONTROVERSIAL DUTY SUSPENSIONS

This subtitle establishes an administrative procedure for non-controversial suspensions of tariffs. Under the Committee bill, persons who want a duty suspended could file a petition with the ITC requesting a duty suspension. The ITC must determine, among other things, whether any domestic producer would be adversely affected by duty suspension or whether any other person objects to the duty suspension. After completing its investigation, the ITC shall submit a report to the President. The President must decide within 30 days following receipt of the ITC report whether to suspend the duty.

SUBTITLE D. MISCELLANEOUS

(1) *Steel Imports.*—Amends section 850 of the Trade and Tariff Act of 1984 to provide that the USTR must seek to include in the bilateral arrangements on steel exports to the United States restraints on welded steel wire fence panels, wire fabric, and welded steel wire mesh for concrete reinforcement. Provides that in the event a country refuses to expand the coverage of an existing agreement to include these items, no modification of the agreement requested by that country may be made.

(2) *U.S.-EC Agreement on Citrus and Pasta.*—Implements tariff reductions agreed to by the United States in the Agreement with the EC with respect to citrus and pasta. Also establishes a mechanism for ensuring a settlement of the U.S.-EC dispute on EC subsidies on pasta by July 1, 1987, by imposing new tariffs on pasta imported from the EC if the case is not resolved by that date.

(3) *No Application To Free Trade Area Agreements.*—Provides that no provision of this bill shall apply to the foreign party to a bilateral free trade area agreement with the United States that entered into force before January 1, 1987, in any case in which there is an inconsistency between such provision and the agreement.

(4) *Purchases of U.S.-Made Automotive Parts by Japan.*—Expresses support of the Congress for the MOSS talks with Japan aimed at increasing market access in Japan for U.S.-produced automotive parts.

(5) *Private Initiative Enhancing Small Business Access to U.S. Trade Laws.*—Expresses the sense of the Congress that the corporate, legal, labor, and academic communities should pursue establishment of an independent organization to provide *pro bono* legal assistance to small business in trade cases.

(6) *Nairobi Protocol.*—Implements the provisions of the Nairobi Protocol to the Florence Agreement.

(7) *Quota on Lamb Imports.*—Establishes a quota on imports of lamb, with a countercyclical mechanism permitting higher levels of imports in periods of domestic shortage.

Title X. Agricultural Trade

The Committee bill establishes several provisions to promote and expand U.S. agricultural exports. Sets up an Office of International Market Development and Export Promotion in the Department of Agriculture.

IV. GENERAL DESCRIPTION OF THE BILL

Title I. Authority to Negotiate Trade Agreements

Title I of this bill has three broad aims.

The first is to provide the President the authority necessary for a sufficient period of time to carry out the Uruguay Round negotiations and other trade negotiations successfully. To this end, it grants the President renewed negotiating authority effective as soon as the current grant of authority expires in 1988, subject only to the requirement that the President first submit to the Congress a statement of trade policy. Agreements concluded under authority of this bill will be subject, as under current law, to Congressional approval under expedited ("fast-track") procedures.

Second, this title seeks to ensure regular, reciprocal consultations between the Executive Branch and the Congress on negotiations and trade policy generally. Without constant close consultation with Congress, the President's negotiating strength is diluted. These amendments therefore specifically provide for such consultations. They also provide for withdrawing Congressional "fast-track" procedures if consultation has not been satisfactory. Third, this title provides for submission of a mid-term report to the Congress on the status of negotiations. This report is designed to put maximum pressure on both U.S. negotiators and our trading partners for new trade agreements early in the Uruguay Round. Thus, if sufficient tangible progress is not being made in negotiations, this bill allows the Congress not to extend fast-track procedures beyond January 3, 1992, by adoption of a resolution disapproving extension.

Fourth, this title sets out new negotiating objectives to take into account current problems and opportunities for beneficial change in the international trading system.

FINDINGS

(Section 101)

Section 101 of this bill contains findings describing the reasons why the Committee believes it is urgent to provide the President effective trade negotiating authority and the broad aims of negotiations to be conducted under the terms of the bill. The basic trade negotiating authority currently available to the President is provided under section 102 of the Trade Act of 1974, permitting entry into agreements to harmonize, reduce, or eliminate nontariff barriers or other distortions to international trade, subject to Congressional approval of the agreements and implementing legislation under special, expedited legislative procedures. That authority expires on January 3, 1988. General authority under section 101 of the 1974 Act to negotiate and proclaim changes in tariffs expired in 1980.

The findings note that the United States has in recent years become a debtor nation internationally, and that to eliminate the trade deficit it must improve its competitiveness. However, the United States cannot achieve this improvement by internal management of the U.S. economy alone. The global economy has grown to become an integrated system, and the United States must be able to make its way in this total world economy or never regain the competitive edge it recently possessed. However, the world trading system today is weak; total world trade has stagnated over the last six years. The United States and its trading partners increasingly are competing for shares of an ever-decreasing world market.

If standards of living and employment in the United States are to improve, the international trading system must be strengthened. The United States has previously been a leader in formulating the GATT and other international efforts to provide an open, transparent world trading system, and it is in the national interest of the United States to do so again. Fair, reciprocal trade agreements to expand the overall level of world trade benefit all workers in all countries, including the United States.

The Committee notes that the GATT Uruguay Round multilateral trade negotiations are underway, and that these negotiations provide a positive sign that the nations of the world may be ready to bring greater order and consistency to the international rules by which trade is conducted. The Committee strongly supports these negotiations, subject to the priorities and procedures set forth in the bill, and urges the President, under the authority granted by this bill, to conclude an agreement on trade as well as related investment, financial, intellectual property, and services agreements.

DEFINITIONS

(Section 102)

Section 102 provides definitions of key terms used in Title I of this bill. The terms "barrier," "distortion," and "international trade" have meanings consistent with the definitions provided in current law under section 102 of the Trade Act of 1974. "State trading enterprise" is defined identically as in section 301(e)(5)(D) of the Trade Act of 1974, as amended by this bill. "Implementing bill" is provided the same definition as in the "fast-track" Congressional approval provision of section 151(b)(1) of the 1974 Act.

AUTHORITY FOR INTERNATIONAL TRADE NEGOTIATIONS

(Section 103)

Section 103(a) grants the President authority, until January 3, 1994, to enter into multilateral trade agreements. This authority covers negotiations on both tariff and nontariff matters, a change from prior separate grants of tariff proclamation authority periodically enacted beginning with the Reciprocal Trade Agreements Act of 1934. Authority to enter into a trade agreement that calls for a reduction in any U.S. rate of duty is limited to 50 percent of the rate of duty applicable on the date of enactment of this bill, with the exception of existing duty rates that do not exceed five percent *ad valorem*.

Currently, section 102 of the Trade Act of 1974 authorizes the President to enter into trade agreements until January 3, 1988, to harmonize, reduce, or eliminate nontariff barriers or other trade-distorting measures.

The Committee decided against re-enacting separate authority for the President to proclaim tariff changes. Comprehensive tariff proclamation authority, last granted to the President by the Trade Act of 1974, expired in 1980. No such authority of any kind has been in effect since 1982. This lapse in authority is the longest such lapse that has taken place since the original enactment of proclamation authority in the 1934 Reciprocal Trade Agreements Act. In the intervening years, the subject whether to again provide proclamation authority has arisen in several hearings. These hearings have failed to raise a consensus that renewal of proclamation authority is a necessary or advisable step.

The fast-track mechanism works well in the context of tariff negotiations. For example, in section 101 of the Trade and Tariff Act of 1984, the Congress granted the President authority to enter into bilateral trade agreements until January 3, 1988, to reduce or eliminate tariffs. This authority may be exercised only if neither the Senate Finance Committee nor the House Ways and Means Committee disapproves of the negotiations under special "fast-track" procedures. Under these procedures the Finance Committee has considered free-trade negotiations with Israel and expects to do so with respect to Canada. The 1965 Canada-U.S. Automobile Pact enacted, without even the benefit of "fast track," reductions of duty that have lasted more than 20 years.

Moreover, at the present date the United States has lower tariffs on most imported goods than do most of its trading partners. Under these circumstances, provision of authority for the President to proclaim changes in tariff rates without first obtaining Congressional approval gives foreign countries little added incentive to negotiate reciprocal tariff reductions. In addition, where U.S. tariffs are still relatively high, they relate to products and industries that are relatively import-sensitive, and the Committee does not believe that it ought to permit the President to lower these duties without prior consultation with, and approval of, the Congress.

The choice of January 3, 1994, as the date for termination of the new grant of negotiating authority represents a balance of considerations. It is an extension of six years from the current expiration date. The Committee believes this is a sufficient extension to allow the President time to conclude Uruguay Round agreements. In fixing this date, the Committee noted the transition between Administrations and negotiators that will take place a year after the new authority goes into effect, and the need for a new Administration to have a start-up period before resuming negotiations in earnest. On the other hand, the Committee wanted the authorization to be of a sufficiently limited nature so as to provide other countries with an incentive to complete negotiations rapidly.

Subsection (b) of section 103 creates separate authority for bilateral trade agreement negotiations on both tariffs and non-tariff matters. It also is effective until January 3, 1994. The provision retains current law providing that no trade benefit may be extended to any country that is not a party to a bilateral agreement by reason of the extension of that benefit by the United States to the other party to the agreement, extending that provision to cover both tariff and nontariff benefits. This provision is to ensure that only those countries subject to the obligations of an agreement stand to benefit from it. Subsection (b) also retains the restrictions on the President's authority to enter into bilateral negotiations now found in section 102(b)(4)(A) of the 1974 Act (request for negotiations by the foreign country and consultation with Congressional Committees). The Committee notes that, if the ongoing free trade area talks with Canada are not concluded and an agreement submitted to the Congress under existing authority and procedures for "fast-track" Congressional approval prior to the expiration date of January 3, 1988, the Congressional "fast-track" will not be available for any such agreement until the prerequisites in section 104(b) are again satisfied.

Subsection (c) of section 103 provides certain restrictions on the President's ability to enter into either multilateral or bilateral negotiations. First, the President, before entering into negotiations with a foreign country, is required to determine whether that country has state trading enterprises that engage in a significant share of that country's exports or goods that compete with imports into that country and whether those state trading enterprises unduly burden and restrict or adversely affect U.S. foreign trade or the U.S. economy, or are likely to have such an effect. If so, the President may enter into an agreement with that country only if the agreement provides that such enterprises will trade in accordance with commercial considerations, and will afford U.S. business firms adequate opportunity to compete for participation in the purchases and sales made by such enterprises.

The second prerequisite on entering into a trade agreement is that the agreement meet whichever of the principal negotiating objectives established in section 105(b) of this bill are applicable to the agreement. The third, fourth and fifth prerequisites provide for the reciprocal exchange of obligations that are likely to be no less advantageous to the United States than to the other signatories to the agreement; provide a reasonable likelihood that the United States can enforce the obligations of the agreement notwithstanding differences between the U.S. culture, legal system and commercial practices and those of any country that is or may become a signatory to the agreement; and complement and reinforce, insofar as practicable, existing agreements with foreign countries that are not signatories to the agreement and existing agreements on related economic subjects. The purpose of these limitations is straightforward—to ensure that the Congressional aims for negotiation established by this bill are carried out in practice and that agreements undertaken are enforceable and consistent with obligations and benefits of the United States provided in other agreements. Particularly, the results of bilateral arrangements should reinforce the objectives of multilateral agreements and negotiations to the fullest extent possible. Moreover, to the extent a new agreement touches upon subject matter not covered by existing agreements, it should complement existing agreements and U.S. trade policies by acting to expand overall trade and to further the rule of law in international trading arrangements. Consideration of other features, such as the long-term precedential value of the agreement, should be taken into account as well.

The Committee notes that the requirement of a reciprocal exchange of obligations does not mean that the commitments on each side must necessarily involve an equal quantity or value of trade. The concern for enforceability of trade agreements notwithstanding differences in culture, legal systems and commercial practices responds to the concern of many Americans that foreign governments in the past have excused their failure to implement trade agreements fully on the grounds of their cultural or other uniqueness, often thereby denying the benefits of trade agreements to citizens of the United States who would benefit from increased exports.

Finally, the President is specifically directed under section 103(c)(3), as under current law (section 102(c)), to consult with the Senate Finance and House Ways and Means Committees prior to entering into any trade agreement, as well as any committee of either House of Congress having jurisdiction over legislative subject matters affected by the agreement.

Section 103(d) calls for the USTR and the ACTN established by section 135 of the Trade Act of 1974 to consult with Congressional Committees on a continuing basis concerning the status of negotiations, the progress being made to meet the negotiating objectives set out in section 105 of this bill, and any obstacles to achieving those objectives, as well as all other matters affecting U.S. international trade policy. The Committee purposely left out of this section a specification of the minimum number of times per year that consultations must occur, which had been suggested as a way of increasing consultation with Congress. In practice, such a requirement can readily become instead a limitation on the frequency of consultation. It is the expectation and intent of the Committee that consultations take place regularly, particularly informal consultations, and that such consultations increase when decisions that may affect Congressional interests are about to be made or when negotiations are being prepared. Recent experience and all the witnesses who have testified on these matters have shown that occasional formal consultation about trade is no substitute for the frequent discussions and reciprocal exchange of information, advice, and opinion between the Executive Branch and the Congress that are necessary to develop a complete consensus on trade negotiation and trade policy matters.

Subsection (d) also establishes the necessity of a mid-term report, to be submitted separately to the Congress by the President and the ACTN, on the progress being made in both multilateral and bilateral trade negotiations. A principal purpose of the report is to provide a basis for the Congress to judge whether sufficient progress is being made in negotiations to justify extension of fast-track procedures under section 104(b)(2). The report, which is to be submitted no later than January 3, 1991, must describe any agreements finalized in the Uruguay Round or in other negotiations, with the anticipated timetable for submitting those agreements to Congress for approval and, with regard to negotiations on nontariff agreements, the President's certification that progress has been achieved warranting continuation of the negotiations, and, with regard to negotiations on tariff agreements, that sufficient progress has been made. The report should also describe any progress that has been made in achieving the objectives established in section 105, identifying those objectives that are not likely to be addressed, the reasons why such objectives are not likely to be addressed, and any alternative objectives the President intends to pursue, or (with regard to the ACTN report) ought to pursue. The alternatives to be considered should include those that may be available under bilateral, rather than multilateral, negotiations.

IMPLEMENTATION OF TRADE AGREEMENTS

(Section 104)

Section 104 retains the "fast-track" procedures for Congressional consideration and approval of trade agreements submitted by the President now established under sections 102 (e) and (f) and 151 of the Trade Act of 1974. Those procedures are:

(1) The President must notify the Congress of his intention to enter into the agreement 90 days before doing so, and thereafter promptly publish his intention in the Federal Register.

(2) After entering into the agreement, the President must submit a copy of the agreement to Congress, together with a draft implementing bill, a statement of any administrative actions proposed to implement the agreement, an explanation of how the bill and statement change or affect existing law, and a statement of reasons the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate. An implementing bill must contain provisions approving the agreement and the statement of administrative action, and any amendments to current law or new authority required or appropriate to implement the agreement.

(3) The implementing bill is introduced in both Houses of Congress on the day it is submitted by the President. This bill is referred to the Committee or Committees of jurisdiction. The Committees have 45 legislative days in which to report the bill; a Com-

mittee is discharged automatically from further consideration after that period.

(4) Each house votes on the bill within 15 legislative days after the measure has been received from the Committee or Committees. A motion in the House or the Senate to proceed to consideration of the implementing bill is privileged and not debatable. Amendments are not in order, and debate is limited to not more than 20 hours.

Although statutory, the procedures in paragraphs (2), (3), and (4) were enacted as an exercise of the rulemaking powers of each House of Congress, and are decreed to be a part of the rules of the House and of the Senate. The procedures may be changed in the same manner as any other rules.

This section also retains the conditional most-favored-nation provision of current law. In order to ensure that a foreign country which benefits from a section 102 trade agreement is also subject to the obligations, the President may recommend to Congress in the implementing bill and statement of administrative action that the benefits and obligations apply solely to the parties to the agreement, if such application is consistent with the terms of the agreement.

The purpose of the "fast-track" approval process for trade agreements is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which generally involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance, while at the same time ensuring expeditious action on the final agreement and implementing bill once submitted. Congressional and private sector involvement throughout the course of trade negotiations, in conjunction with the assurance of expedited consideration of the negotiated results, represent a careful balance between the President's authority to conduct foreign affairs and to negotiate agreements and the Congress' constitutional authority to regulate foreign commerce. This process was used successfully in approving the Tokyo Round trade agreements and implementing changes in U.S. law under the Trade Agreements Act of 1979.

Section 104(b) provides that, in order for any implementing bill to have the benefit of the Congressional "fast-track," the President is required to have previously submitted to the Congress a statement of trade policy. This statement must include, but is not limited to, a description of the President's policies with respect to domestic industries affected by imports and domestic industries that have a substantial potential for exporting. The Committee intends that this statement provide more than a token gesture of compliance with the requirement. The purpose is to obtain a full understanding of the Administration's position on trade matters, and thereby further more informed discussion and consultation between the Executive Branch and the Congress.

Section 104(b)(2) provides that the fast-track will not be available for any implementing bill after January 3, 1992 (two years before the President's negotiating authority expires), if its extension for the final two years is disapproved. The process works in the following fashion. Disapproval becomes effective only if either House of Congress passes a resolution disapproving extension during the period between January 4, 1991 (the day after the date the mid-term reports by the President and the ACTN are required to be submitted under section 103(d)), and July 1, 1991. The resolution must first have been reported favorably by the Finance Committee in the Senate or the Ways and Means Committee in the House of Representatives before May 15, 1991. Unlike normal fast-track procedures, neither Committee may be automatically discharged of its consideration of the resolution. The wording of the resolution is specified by this section, and only resolutions reported in the form set out would be effective to avoid extension of the fast-track. The purpose of providing for removal of the fast-track in this manner is to ensure that there will be a determination made, on the basis of the mid-term reports and consultations between the Executive Branch and the Congress, whether sufficient tangible progress has been made in international trade negotiations to justify extension. The Committee's intent is to give both the Executive Branch and foreign countries engaged in negotiations with the United States the incentive to negotiate seriously and to make timely progress.

The Committee believes that more effective multilateral agreements are the most effective way to expand world trade and ensure fair trade. However, if progress has not been demonstrated in multilateral negotiations and fast-track authority is not extended for the final two years, alternative approaches, such as bilateral negotiations, should be pursued.

Section 104(b)(3) provides for potential use of a "reverse" fast-track process in the event the Administration fails to consult regularly with the Congress on trade policy generally, including but not limited to the Uruguay Round and other negotiations, in accordance with the procedures and purposes of this bill. The availability of this sanction is designed to encourage the President to consult regularly and in good faith with the Congress on trade matters. The Committee anticipates that the mere availability of this procedure will provide an incentive for consultation and that the implementation of the procedure will prove unnecessary.

Under this process, fast-track would be withdrawn in the event both Houses of Congress pass resolutions of disapproval within 60 days of each other. No limitation is provided on when such a resolution could be acted upon; both the Ways and Means Committee and the Finance Committee would be privileged to report a resolution of their respective House at any time fast-track procedures are in effect. The resolution may only originate with the appropriate Committee in each House of Congress. Once reported by the Finance or Ways and Means Committee, each resolution would itself be on the fast-track in each House of Congress, that is, it would be a privileged matter and could not be amended or delayed. The resolutions would be effective only if reported in exactly the form set out in the bill and only if the two resolutions passed within 60 days of each other.

NEGOTIATING OBJECTIVES

(Section 105)

Section 105 of this bill contains a new statutory statement of overall and principal objectives of the United States in multilateral and bilateral trade negotiations. Currently, sections 103 through 108 of the Trade Act of 1974 establish U.S. overall trade negotiating objectives, as well as objectives for sector negotiations, international safeguard procedures, access to supplies, and bilateral agreements and agreements with developing countries. Section 121 specifies particular areas in which the President must seek revision of the GATT. The Trade and Tariff Act of 1984 amended the 1974 Act to add objectives for negotiations on services, high technology products, and foreign direct investment.

The purpose of establishing a new set of negotiating objectives in the law is to update the objectives in present law, most of which were provided in the Trade Act of 1974 for the Tokyo Round of GATT negotiations, to reflect more current trade issues and conditions of trade that need to be addressed in upcoming trade negotiations, especially in the GATT Uruguay Round. Most of these objectives concern either the kinds of trade barriers and distortions identified in the National Trade Estimate required by section 181 of the 1974 Trade Act, or new subject matters that are either not now covered, or are inadequately covered, by GATT articles at present, including adjustment of currency exchange rates.

The principal goal of these objectives is to increase and improve international trading principles and disciplines on unfair trade practices, as well as to eliminate trade barriers and distortions. The strengthening of mechanisms and procedures for dispute settlement and greater assumption of trade agreement obligations by countries is equally essential for restoring the credibility of the international trading system and institutions. Moreover, effective GATT trading rules do not exist on agriculture, services, intellectual property, and investment.

The objectives for negotiations are broadly stated with the clear intent that, to the maximum extent possible, they should be achieved through multilateral negotiations. However, achievement of these goals can and should be obtained in a flexible manner. If the Uruguay Round proves not to be the most effective avenue toward some U.S. negotiating aims, the United States should be prepared to try other means, including bilateral and plurilateral negotiations. All negotiations undertaken, however, should have the objectives stated in this section as their underpinning, and all efforts should be taken to make all negotiations initiated and all agreements reached complementary with each other, with current provisions of agreements to which the United States is a party, and with the statutory objectives enacted by this legislation.

In line with the policies stated above, the bill's overall negotiating objectives, which are broadly stated in section 105(a), are to obtain more open, fair, and equitable market access; the reduction or elimination of barriers and other trade-distorting practices; an appropriate overall balance between benefits and concessions within the agricultural, manufacturing, mining, and services sectors, and improved management of the new global economy.

Section 105(b) sets forth the principal negotiating objectives of the United States:

Competitive Market Opportunities

It is to be a principal negotiating objective to obtain, with respect to the manufacturing, mining, agriculture, and services sectors, and investment related to trade in these sectors, competitive opportunities for U.S. exports to foreign countries that are equivalent to the opportunities available to foreign exports in the United States. The existence of protectionist barriers to imports is the most pervasive problem facing U.S. exporters in the world market. At the same time it is corrosive of the entire international trading system, distorting its operation in countless ways and adding to the inability of overall trade to grow at more than an insignificant pace. The liberalization and disciplining of such barriers should plainly be a priority of U.S. negotiating efforts. The annual National Trade Estimate required under section 181 of the 1984 amendments to the 1974 Trade Act identifies specific practices, and the types of practices, that ought to be eliminated through negotiation, in conjunction with other efforts, including use of the provisions of section 301 of the Tariff Act of 1930.

This subsection also focuses on disparities between U.S. and foreign tariff levels on particular products that impede U.S. bilateral access to particular foreign markets. In many instances, U.S. duty-free treatment or low duties on specific products permit essentially unrestricted foreign access to the U.S. market, but because not all countries in past trade negotiations reduced duties to the same levels, many U.S. exporters face high duties imposed on those same products by the foreign countries that have not kept pace with the United States in reducing rates of duty.

Improvement of GATT

Section 105(b)(2) contains a number of specific objectives with the aim of bringing existing trade agreements, including the application and enforcement of those agreements, into conformity with principles promoting the development of an open, nondiscriminatory, and fair world trading system. These include, but are not limited to, the following:

(1) *GATT procedures.*—This objective calls for the revision of GATT decision making procedures in order to ensure timely and decisive resolution of disputes. The Committee notes that dispute resolution is now a process that often takes several years to resolve, leaving uncertainty in trading relations with regard to the products and issues involved and undermining support for trade agreements. The consideration of procedural changes should include the regular participation of nongovernmental experts, chosen from a standing roster, on dispute resolution panels. This provision also encourages the negotiation of the establishment of a ministerial-level mechanism for ongoing monitoring of, and consultations on, the consistency of the trade policies of GATT signatory countries with the principles and requirements of the GATT.

(2) *Treatment of primary and non-primary products.*—This objective seeks to establish similar rules for the treatment of both primary and non-primary products under GATT articles relating to subsidies and countervailing measures.

(3) *Unfair practices.*—This calls for the revision of GATT articles to define and discipline additional unfair trade practices that are not currently specifically addressed by the GATT, but which have in practice been found to constitute serious problems in the implmentation and enforcement of both domestic U.S. law and the GATT. These include the provision of subsidies on inputs to imported finished products; foreign export targeting practices; and diversionary dumping, including dumping of input products in either the home country or other countries which are then incorporated into a finished product in order to avoid the imposition of dumping duties.

(4) *Additional GATT coverage.*—This establishes as an objective the extension, in the Uruguay Round, of GATT articles and codes of conduct to products, sectors, and conditions of trade that are not adequately covered by the GATT, in order to move toward more open and fair trade practices. Efforts in this regard should relate to at least the following: services; investment issues, including performance requirements; intellectual property rights; and expansion of entity coverage under the Government Procurement Code.

(5) *Treatment of developing countries.*—GATT articles currently provide numerous exemptions permitting special treatment for developing countries in recognition that strict application of GATT trading rules to such countries may in many instances retard efforts to further their economic development. However, the GATT lacks procedures for reducing nonreciprocal trade benefits granted to these countries when their level of development no longer justifies differential treatment. This provision would make accomplishment of these procedures a negotiating objective.

(6) *Current account imbalances.*—The objectives with respect to current account imbalances are to develop GATT rules to address problems arising from the existence of countries with persistent and excessive current account imbalances with the world, and to seek expedited implementation by countries with persistent current account surpluses of their trade agreement obligations whenever possible. Current GATT provisions in Article XII address principally the responsibilities of countries experiencing deficits in their balance of payments. The Committee believes that the GATT ought to address the lack of provisions to bring about action by surplus countries to adjust their policies in order to bring greater stability to the world trading system.

(7) *Transparency.*—This provision calls for revisions of the international trading system to enhance transparency, including, but not limited to substitution or replacement of quotas with tariffs or auctioned quotas; the use of tariffs for domestic adjustment; and transparency in the trade policy making procedures of GATT signatories to clarify for each country the costs and benefits of its own and other countries' trade policies.

(8) *IMF and World Bank coordination.*—This makes it an objective to seek greater GATT coordination with the IMF and the World Bank to ensure participation of the GATT Secretariat in sta-

bilization programs and consideration of structural adjustment loans.

(9) *State trading practices.*—This objective requires negotiators to seek the enforcement of GATT rules, under Article XVII, against noncommercial state trading practices, as described in section 301(e)(5) of the Trade Act of 1974, as amended by this bill, and unfair trade concessions requirements, as described in section 301(e)(10) of the 1974 Act, as amended by this bill.

(10) *Agriculture.*—This objective would seek the revision of GATT with regard to agricultural trade in order to increase U.S. agricultural exports by eliminating barriers to trade; to clarify GATT rules for agricultural trade; to resolve questions under the GATT pertaining to export subsidies, market pricing and market access; to prevent the harmful effects on other countries and the world trading system in general of the EC's CAP; and to seek the elimination of barriers to agricultural trade (including high value-added commodities) in Japan. These objectives for agriculture reflect both the weakness of GATT agricultural trade rules as compared to trade rules for other sectors, and the urgency of agricultural trade problems. Achieving discipline over trade in agriculture products, especially with respect to certain subsidy practices, is expected to receive high priority in the Uruguay Round. It is important to develop agreed policies and practices that decrease the effects of farm support programs on world prices and improve market access for U.S. exporters.

(11) *Worker rights.*—The principal negotiating objectives with respect to worker rights are to promote respect for worker rights, to review the relationship of worker rights to the GATT with a view to ensuring that the benefits of the trading system are available to all workers, and to adopt as a principle of the GATT that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

(12) *Border tax adjustments.*—This provision renews a provision of the 1974 Trade Act calling for the revision of the GATT with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily for revenue on direct taxes, such as income taxes, rather than on indirect taxes, such as value-added taxes. The Committee believes that GATT provisions on tax adjustments in international trade should be revised to assure that they will be trade neutral. Present provisions permit adjustments on traded goods for certain indirect taxes but not for direct taxes. To the extent that indirect taxes are not fully passed through to the consumer in the country of manufacture, the remission of the full amount of assessed indirect taxes on exportation constitutes an unfair advantage to those who export. Similarly, absent the unlikely event of a full pass-through of tax, the imposition of an indirect tax on imports constitutes an additional and unfair burden on those who export to that country. American exporters, for example, would have to absorb another nation's indirect taxes as well as our nation's direct taxes. The Committee expects that the President will seek such modification of present rules as would remove any disadvantage to countries like the United States relying primarily on direct taxes and put all countries on an equal footing.

(13) *Import relief measures.*—This provision requires as an objective the establishment of procedures in the GATT to monitor the use of emergency "safeguards" relief by GATT signatories on behalf of their domestic industries to ensure that relief does not discriminate between different foreign suppliers, is limited in duration, and is dependent on domestic industries making adjustment efforts.

Renewal of Certain Objectives

Section 105(b)(3) includes the principal negotiating objectives described in section 104A of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984, relating to trade in services, foreign direct investment, and high technology products.

Foreign Direct Technology

This provision, section 105(c), amends section 104A of the Trade Act of 1974 to add a new subsection on U.S. access to foreign-developed technology. It provides that it is a principal trade negotiating objective of the United States to eliminate or reduce foreign barriers to equitable access by U.S. persons to foreign-developed technology, including any foreign practices that restrict the participation of U.S. persons in government-supported research and development projects; deny equitable access by U.S. persons to government-held patents; require the approval of, or other action by, the foreign government, as a condition for the granting of licenses to U.S. persons (except when necessary for national security purposes to control the export of military technology); and otherwise deny equitable access by U.S. persons to foreign-developed technology or contribute to the inequitable flow of technology between the U.S. and its trading partners. In pursuing these objectives, U.S. negotiators are required to take into consideration U.S policies regarding licensing or access by foreign persons to U.S. technology.

This objective is designed to ensure that U.S. persons have the same degree of access to basic research and technology developed in other countries as foreign competitors have to technology developed in this country. Many foreign competitors, notably Japan, have derived much of their competitive strength through the commercial application of technology derived from the United States. Technology transfer, like trade in general, should be reciprocal and mutually beneficial.

TERMINATION AND RESERVATION AUTHORITY; RECIPROCAL NONDISCRIMINATORY TREATMENT; ADVICE

(Section 106)

Subsection (a) of section 106 provides a cross-reference to provisions of the Trade Act of 1974 that will continue to be effective with regard to trade agreements entered into under the provisions of this legislation, including those on termination and withdrawal authority, reservation of articles from coverage under agreements for national security or other reasons, and public hearings and advice from the ITC and other Federal agencies concerning negotiations.

Subsection (b) of section 106 reenacts the equivalent of the provisions of current section 126(b)-(c) of the Trade Act of 1974, with changes in the applicable time frame to be consistent with the structure of the amendments made in this bill. It provides that, by January 3, 1991, the date of the President's mid-term report to the Congress under section 103(d)(2)(A) of this bill, the President must determine whether any "major industrial country" has failed to make concessions under trade agreements entered into under section 103 that provide competitive opportunities for the commerce of the United States in that country that are substantially equivalent to the competitive opportunities provided by concessions made by the United States under those trade agreements. If so, the President must, either generally with respect to that country or selectively by article produced by that country, recommend legislation to restore the equivalence of competitive opportunities. He may recommend legislation either providing for the termination or denial of the trade-concession benefits or providing that any law necessary to carry out a trade agreement not apply to that country. Under this provision, the term "major industrial country" should be defined in the same manner as under section 126(d) of the Trade Act of 1974.

Subsection (c) of section 106 amends the provisions of section 135 of the Trade Act of 1974, which provides for the establishment of the ACTN and other private sector advisory committees, to provide that a predominant number of the members of any such advisory committee may not belong to the same political party. In recent years the ACTN has become highly politicized, and it is the intent of the Committee, to the greatest extent possible, to remove partisan political considerations from the appointment of members of these committees. The Committee is particularly concerned that the members of the committees have adequate and appropriate technical and professional experience to carry out their responsibilities.

Finally, section 106(d) requires consideration of the import-sensitive nature of articles or industries that would be affected by concessions made in negotiations. Under current law, section 131 of the 1974 Act, the President, before offering in trade negotiations to modify U.S. tariffs, must submit a list of proposed modifications to the ITC. The Commission is then required to advise the President on the probable economic effect of the modifications on industries producing like or directly competitive articles and on consumers, so that he may make an informed judgment on the impact of the changes. The President may also request the Commission to report to him on the probable economic effects of modifications of any trade barrier or distortion of trade.

Subsection (d) adds the requirement that the Commission, in making any such report, must identify any article that is sensitive, or potentially sensitive, to imports, and shall include a statement of whether any reduction, elimination, or modification of duties would injure the domestic industry producing the article in question or an article like or similar to the article. In determining whether to make offers to modify duties in the course of negotiating a trade agreement, the President is required to take the Commission's report into account, together with any other information received from an advisory committee or any organization that holds public hearings under section 133 of the 1974 Act on the import sensitivity of an article or a domestic industry. In applying this provision, the listing of import-sensitive articles provided in section 503 of the Trade Act of 1974 for purposes of administering the GSP should be treated as illustrative.

The term "injury" as it is used in this legislation means a harm that is not inconsequential, immaterial, or unimportant. In making its determination that a given product or sector is import-sensitive, the ITC shall consider, among other factors, the volume of imports of the article which is the subject of the investigation; the effect of imports of that article on prices in the United States for directly competitive articles; and the impact of imports of such articles on domestic producers of directly competitive articles.

The Committee intends that the determinations of the ITC with respect to import sensitivity should guide the President in his decisions on whether or not to eliminate import duties on the products or sectors in question. Should the President decide to reduce or eliminate import duties on products or sectors which the ITC had determined to be import sensitive, the Committee expects a full accounting and explanation in the course of consultations required by this Act.

ACCESSION OF STATE TRADING REGIMES TO EXISTING MULTILATERAL TRADE AGREEMENTS

(Section 107)

This section adds a prerequisite to United States approval of the accession of new countries to the GATT or any other multilateral trade agreement. It requires the President to ascertain whether state trading enterprises account for a significant share of the international trade of that country and unduly burden or restrict the foreign trade of the United States or the U.S. economy. If so, the President would be required to reserve the right of the United States to withhold extension of the multilateral agreement to that country, and the agreement will not apply between that country and the United States. The withholding of rights under the agreement required by this section can be removed only if the country agrees that its state trading enterprises will make purchases (other than purchases for the use of that country) and sales in international trade in accordance with commercial considerations, and will give U.S. firms adequate opportunity to compete for participation in the purchases or sales of those enterprises.

Alternatively, the President may avoid withholding of extension of the agreement if he submits a bill to the Congress to approve the extension and the bill is enacted into law. The bill would be entitled to treatment under the expedited Congressional procedures provided in section 151 of the Trade Act of 1974.

This provision reflects the seriousness with which the Committee views the practice, prohibited under Article XVII of the GATT, of a foreign government trading through state trading enterprises on the basis of other than commercial considerations. This problem is also addressed in this bill's amendments to section 301 of the Trade Act of 1974, in section 306(e). The Committee notes that certain countries, particularly non-market-economy countries, that have applied or are considering applying for admission to membership in the GATT engage in state trading practices of the sort addressed in this provision. The Committee intends to give the United States leverage, through the possible withholding of agreement to their accession to the GATT, to gain commitments from them that they will bring these practices into line with international commitments.

NEGOTIATIONS ON CURRENCY EXCHANGE RATES

(Section 108)

This section requires bilateral currency negotiations under specified circumstances. It provides that whenever, in the course of any trade negotiations under this legislation, the President determines that a foreign government participating in the negotiation both manipulates its exchange rate and maintains barriers to investment, discourages internal investment, or engages in a pattern of practices to prevent effective balance of payments adjustments or to gain an unfair trade advantage, he must take action to initiate expedited bilateral currency negotiations with that country. Negotiations are not required (although they may be appropriate and are certainly not barred) if the President determines that the foreign country's currency is not substantially undervalued as compared to the dollar and the foreign country does not have a material global current account surplus.

This section is designed particularly to apply in the GATT Uruguay Round negotiations, although it is applicable to other negotiations undertaken by the United States. It recognizes that the trade concessions and benefits received by the United States under an agreement can be reduced or nullified by currency misalignments, especially when misalignments are the result of foreign government policies designed to maintain an unfair trade advantage. Under this provision, the President can determine whether a country that manipulates its currency is willing to negotiate adjustments in its currency in order to alleviate this problem. If not, or if negotiations are unsuccessful, the President can weigh the failure of the foreign government to cure the imbalance in exchange rates in determining whether to make concessions in the trade negotiation or whether to enter into an agreement as a result of that negotiation.

Title II. Enhancing Competitiveness

The United States faces new challenges in competing in the global economic environment that has arisen in the last ten years. The Committee believes that United States trade laws can be improved so that the laws will contribute more to enhancing the competitiveness of the American economy. The purpose of this title is to assist American firms and workers in meeting the new conditions of international competition.

SUBTITLE A. POSITIVE ADJUSTMENT IN IMPORT-IMPACTED INDUSTRIES

INVESTIGATIONS UNDER SECTION 201 OF THE TRADE ACT OF 1974

(Section 201)

Because of Congressional concern about the impact of trade agreements on United States industries and workers, trade agreements to which the United States is a party generally contain an "escape clause" whereby the obligations of the agreement may be temporarily suspended in certain circumstances. The most general escape clause is contained in Article XIX of the GATT.

The rationale for the escape clause is that, as barriers to international trade are lowered, some industries and workers inevitably face serious injury, dislocation and perhaps economic extinction. The escape clause is aimed at providing temporary relief for an industry suffering from serious injury, or the threat thereof, so that the industry will have sufficient time to adjust to freer conditions in international competition. While the escape clause may result in higher costs to consumers temporarily, it may also serve to promote improvements in overall economic efficiency, first by assuring that facilities that represent extensive investment are employed for periods sufficient to adjust to import competition, and second by allowing those Amercians most directly affected by trade to have an opportunity to save their jobs through adjustment.

To invoke the escape clause, current law sets forth a mechanism under sections 201 to 203 of the Trade Act of 1974 whereby U.S. industries can receive relief from serious injury caused by increases in imports. Under section 201, U.S. firms or workers may file a petition with the ITC for import relief. If the ITC finds serious injury to a domestic industry caused by increased imports, it determines the import relief necessary to prevent or remedy the injury and reports its findings to the President. The President may then modify, adopt or reject the ITC's recommendations, based upon what he determines is in the national economic interest.

Although current law directs the President to provide the import relief, if any, that will facilitate adjustment and prevent or remedy the serious injury, the Committee believes that, in most cases, neither objective has been achieved. The Committee is concerned that the adjustment aspects of section 201 have not been emphasized enough under the administration of current law. Because the ITC is charged by law to recommend the import relief that will prevent or remedy the serious injury and the President is charged with accounting for the national economic interest, neither the ITC nor the President have been focusing adequately on whether the import relief is likely to promote the kind of positive adjustment that U.S. industries need to be making to meet international competition. Nor have the ITC or President been adequately considering whether industries that are provided import relief, in fact, make a positive adjustment, thereby justifying the continuation of such relief.

The Committee believes strongly that, when a seriously injured American industry appeals to the Government for import relief, the industry must be prepared to undertake serious efforts to make a positive adjustment if that relief is provided. In exchange for an industry's demonstration that it will undertake such efforts, the Committee is willing to increase the likelihood that the President will take action to assist the industry.

The purpose of the Committee bill is to make it more difficult for U.S. industries to receive import relief because industries are expected to show, throughout the process, how they will make a positive adjustment to import competition. The ITC would then take these demonstrations into account in formulating its recommendation to the President regarding the actions that are likely to assist the industry in making a positive adjustment. In return, the Committee bill offers more assurance that industries that meet this standard, which is higher than current law, will receive assistance by reducing the President's discretion to deny the relief recommended by the ITC. Because the Committee believes that there may be actions other than import relief that will assist an industry in competing with imports, the bill authorizes the President to use other tools, such as antitrust exemptions or regulatory relief, to assist the industry.

The Committee believes that the continuation of any actions taken by the President should be contingent on the actual efforts of the domestic industry and its workers to make a positive adjustment. Therefore, while the Committee bill limits the President's discretion to reject the ITC's recommendation at the time he first receives it, it grants the President discretion to modify the relief after three years, based on the industry's performance. If the President determines, based on reports from the ITC, that the domestic industry and its workers have not made an adequate effort to make a positive adjustment, he may reduce or terminate the relief.

The Committee is also concerned that most import relief measures for U.S. industries have been provided outside of the mechanism provided by section 201. In the past, the incentives to use section 201 have been low because relief recommended by the ITC has often been reduced or denied by the President. The Committee believes that section 201 is the appropriate mechanism for industries to use in seeking import relief. The purpose of this bill is to encourage industries seeking relief to use section 201. This will improve the likelihood that import relief, when provided, will achieve the Committee's goal of using the trade laws to promote a more competitive U.S. economy.

The Committee bill amends sections 201 to 203 of the Trade Act of 1974 by replacing them with new sections 201 to 205 of the 1974 Act.

Investigations by the U.S. International Trade Commission

(New Section 201)

Under current law, a petition for eligibility for import relief for the purpose of facilitating an orderly adjustment to import competition may be filed with the ITC by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The petition must include a statement describing the specific purposes for which relief is being sought, which may include objectives such as facilitating the orderly adjustment of resources to alternatives uses and other means of adjustment to new conditions of competition.

Upon the filing of a petition, or upon the request of the President, the USTR, the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate, or upon its own motion, the ITC shall investigate whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The ITC is required to report its determination regarding injury and its recommendation with respect to relief to the President within six months of the date the petition is filed, or the request received. The ITC may not investigate any domestic industry that has previously received import relief for two years following the termination of that relief or for one year from the ITC's report to the President in cases where no relief was provided.

The Committee bill establishes a new requirement that any petitioner for import relief under new section 201(a) submit, when the petition is filed, a plan to promote positive adjustment. The bill also requires the petition to specify whether the purpose of seeking import relief is to facilitate the orderly transfer of resources to alternative uses, to enhance competitiveness, or for other means of positive adjustment to new conditions of competition. The purpose of requiring the petitioner to submit a plan at the beginning of the proceeding is to afford an opportunity for early consultation between the petitioner, other firms and workers in the industry, and the Government regarding actions that will be taken to promote a positive adjustment in the industry.

The Committee bill retains the standard in current law for determining injury but requires the ITC to make its injury determination earlier than under current law. The ITC is required to make its injury finding within 150 days of the filing of a petition or the receipt of a request. The purpose of requiring an early injury determination is to allow the ITC more time for full and careful consideration of its relief recommendation to the President. The Committee anticipates that determining the actions likely to assist in a positive adjustment will require considerable attention by the ITC and consultation between it and the firms and workers in the domestic industry.

The Committee bill provides that investigations not be undertaken by the ITC with respect to any industry that has previously received import relief for a period equal to the length of time that the previous import relief was in effect. Current law prohibiting investigations for one year following an ITC report would be retained with respect to investigations that resulted in no action or action other than import relief. The purpose of changing the length of the period during which no investigation may be undertaken to match the period of any relief previously granted is to assure that the industry has a strong incentive to make a positive adjustment. The Committee believes this is appropriate since the bill also extends the period for which relief may be granted.

In determining the "domestic industry" producing an article like or directly competitive with an imported article, current law directs that the ITC:

(1) May, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(2) May, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(3) May, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

In making its injury determination, current law provides that the ITC must take into account all economic factors which it considers relevant, including but not limited to:

(1) With respect to "serious injury," the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment within the industry;

(2) With respect to "threat of serious injury," a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned; and,

(3) With respect to "substantial cause," increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

The term "substantial cause" is defined as a cause which is important and not less than any other cause.

With respect to the definition of domestic industry, the Committee bill requires, rather than permits, the ITC, in the case of a domestic producer that also imports, to treat as part of the domestic industry only its domestic production. With respect to serious injury, the bill further clarifies that, when the ITC considers the inability of a significant number of firms to operate at a reasonable level of profit, the ITC should only consider the operation of domestic production facilities. The bill also states specifically that imports of like or directly competitive articles by domestic producers in an industry shall not be considered by the ITC as an indication that there is no serious injury, or threat thereof. These provisions are intended to focus the ITC's injury investigation on domestic operations as opposed to any importing or offshore activities of domestic producers.

The Committee bill adds the following economic factors to the listing of those that are relevant to a determination of threat of serious injury:

(1) A decline in market share;

(2) Any combination of coordinated foreign government actions that (a) are bestowed on a specific industry the effect of which is to assist the industry in becoming competitive in exporting, and (b) causes, or threatens to cause, serious injury to the domestic industry;

(3) The existence of preliminary or final affirmative antidumping or countervailing duty determinations;

(4) The extent to which domestic firms are unable to maintain existing levels of expenditures on research and development; and,

(5) The extent to which foreign exports are being diverted to the U.S. market by reason of trade restraints in foreign countries.

The Committee believes that the added factors are relevant to the ITC's analysis of threat of serious injury. A decline in market share is relevant because it signals that the domestic industry's market position relative to foreign competitors is deteriorating. Injurious targeting, whether industrial or export targeting, that assists a foreign industry to become more competitive in exporting may have a negative impact on the United States industry by virtue of the advantages and incentives to export it provides to the foreign industry. The existence of antidumping and countervailing duty determinations indicate the presence of unfair trade practices that may have been found to cause material injury. The maintenance of research and development activities are, for many industries, crucial for future business operations and profitability. Diversion of foreign exports to the U.S. market implies that there is greater supply in the U.S. market, and therefore increased pressure on United States producers, than would occur in the absence of such diversion.

The Committee bill clarifies that the Commission shall take into account the condition of the domestic industry over the course of the relevant business cycle, and shall not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury, or threat thereof. This provision is meant to clarify that import relief should be available during a recession or economic downturn. Because substantial cause is defined under current law as a cause which is important and not less than any other cause, the aggregation of causes of declining demand associated with a recession or economic downturn, such as unemployment, reduced business expenditures, and declines in disposable income, into a single cause of serious injury may result in the recession or economic downturn being considered a more important cause of serious injury than increased imports. By not aggregating the recession-related causes of injury, the Commission will be more likely to focus on the actual impact of the imports during the recession.

The Committee bill requires the ITC to examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry and include its findings in its report to the President. The purpose of this provision, which is largely a codification of current ITC practice, is to assure that all factors injuring the domestic industry are identified.

Domestic Industry Efforts.—While current law provides some opportunities and incentives for petitioners to demonstrate to the ITC and the President the efforts made by the firms and workers in the industry to compete more effectively with imports, the Committee bill significantly strengthens this aspect of current law. The Committee believes that import relief can be used to promote positive adjustment, but that it does not do so automatically. Positive adjustment requires affirmative efforts, primarily by those in the affected industry. Given such efforts, import relief is often an essential element in making positive adjustment possible.

In addition to requiring that a petitioner submit a plan to promote positive adjustment at the time the petition is filed, the Committee bill allows in new section 201(c)(2) of the 1974 Act individual firms in the industry, workers, local communities, trade associations or other persons or groups to submit commitments to the ITC with respect to their individual efforts to promote a positive adjustment in the domestic industry. While such commitments may be submitted to the ITC any time after the petition is filed, the ITC is required to seek commitments, on a confidential basis, from those individual members of the industry it deems appropriate in the event that it makes an affirmative injury determination. These commitments, as well as the plan submitted by the petitioner, would be taken into account by the ITC in making its recommendation to the President.

The plan and the commitments should set forth objectives and specific steps that members of the industry, both firms and workers, would undertake to improve the ability of the industry to compete with imports after relief ends or to adjust to import competition through an orderly transfer of resources to alternative uses. The Committee expects that the plan and commitments may address, among other factors, the ability of producers in the industry to:

(1) Generate adequate capital to finance modernization;

(2) Improve productivity through such measures as automation, management innovations, or labor policy;

(3) Enhance competitiveness through research and development or marketing strategies;

(4) Promote diversification into alternative products, industry consolidation or other forms of adjustment; or,

(5) Enhance opportunities for long-term employment prospects in the industry.

The Committee envisions both the development and consideration of the plan and commitments from industry members as a dynamic and ongoing process, throughout the import relief proceeding. The Committee expects the petitioner to consult with appropriate Government officials, including representatives of the ITC and USTR, and other interested members, including workers, in the domestic industry over the course of the import relief proceeding regarding efforts to promote positive adjustment. State expertise, such as that of state economic development specialists, could also be helpful in the effective development and implementation of a program for positive adjustment. These consultations will provide the opportunity for an interactive process to consider the adequacy of the proposed industry adjustment measures in the context of any relief that might be provided. While the petitioner is required to submit a plan at the time of filing a petition, the Committee recognizes that the plan initially submitted may change over the course of the proceeding, reflecting the consultative process.

The Committee recognizes that the formulation of an industry-wide plan may be difficult in some industries, either because the industry is fragmented in structure or because some members of the industry choose not to participate in the process. In such cases, the Committee expects that the individual commitments made to the ITC by members of the industry would be particularly important. The ITC would take such commitments, as well as any plan submitted, into account in deciding what actions to recommend to promote a positive adjustment.

By having the ITC take into account the petitioner's plan and commitments from those who have the ability to impact an industry's adjustment, the Committee intends to promote a more productive use of the import relief laws. The combination of efforts by firms and workers in the industry and others that can assist the adjustment with action by the President that is specifically designed to promote a positive adjustment in light of those efforts should ensure that temporary protection results whenever possible in a more internationally competitive industry. In addition, the likelihood of this result is improved because the plan, the individual confidential commitments, and any modification of the plan and commitments developed during the consultations are intended by the Committee to form the basis for monitoring industry developments during any period of relief.

Because of the importance of plans and commitments to the monitoring process, petitioners and other industry members are encouraged to continue consultations with the USTR after the ITC's report has been sent to the President in order to modify the plan or commitments, if necessary, in light of the ITC's recommendations. The consultations would also provide a means for the President to obtain information on the potential usefulness of actions he is authorized to take that are not specifically aimed at the regulation of imports, for example, antitrust or regulatory relief.

Provisional Relief

(New Section 202)

Current law provides no mechanism whereby the President may provide emergency relief pending a final determination even though international law permits such action. The Committee bill creates a new section 202 of the 1974 Act to allow the President, in certain circumstances, to impose provisional import relief pending the final outcome of the investigations.

Provisional Relief in Critical Circumstances.—The Committee bill requires the President to impose provisional measures if, during the course of an investigation, he finds that critical circumstances exist. Critical circumstances exist if a significant increase in imports (actual or relative to domestic production) over a short period of time has led to circumstances in which a delay in the imposition of relief would cause damage to domestic industry that would be difficult to remedy at the time relief would normally be provided. Provisional measures would consist of any of the actions that the President is authorized to take as final measures under this bill and would remain in effect until the measures are revoked by the President, or the ITC makes a negative injury determination, or 90 days after the ITC makes an affirmative injury determination.

The Committee expects that the President will examine whether critical circumstances exist when a petitioner alleges, either at the time of the petition or prior to the ITC's injury determination, that they exist. The Committee expects that the President would determine whether provisional relief is appropriate based on the advice of the ITC.

The Committee is adopting this provision because it recognizes that, in some cases, delaying action until the end of the import relief proceeding may cause irreparable damage to the domestic industry. Because import relief provided under this title is prospective, it may not be able to repair the serious injury that has occurred by the time relief would normally be provided. The surge in imports that is a precondition for finding critical circumstances often occurs because foreign exporters and U.S. importers are attempting to enter imports before any imposition of import restrictions as a result of the import relief proceeding. Such efforts in anticipation of restrictions further aggravate the serious injury. In these situations, the provision of import relief at an early point in time is appropriate to prevent irreparable damage to the United States industry being caused by efforts to evade United States trade laws.

By providing for provisional relief in critical circumstances the Committee is finally implementing the provision of Article XIX of the GATT that allows contracting parties to suspend their GATT obligations without prior consultation where delay would cause damage to an industry that would be difficult to repair.

Emergency Relief for Perishable Products.—The Committee bill allows a petitioner filing for import relief regarding a perishable product also to file the petition with the Secretary of Agriculture with a request for emergency relief. Within 14 days, the Secretary shall advise the President and recommend emergency action if the Secretary has reason to believe that increased imports are a substantial cause of serious injury, or threat thereof, to the domestic industry and that emergency action is warranted.

If the Secretary recommends that the President take emergency action, the President has seven days to proclaim import relief in the form of tariffs, quotas, tariff-rate quotas or any combination thereof, or publish notice of his decision not to take emergency action. Emergency relief would remain in place until final actions are taken, the President decides not to act, the ITC finds no injury to the domestic industry, or the President decides relief is no longer warranted due to changed circumstances.

Emergency relief is provided to producers of perishable products because such producers are particularly vulnerable to sudden and unexpected surges in imports. A perishable commodity must be marketed within a short period of time, since it rapidly deteriorates. Accordingly, producers of perishable products may need expedited import relief if the relief is to be effective. The Committee intends this provision to apply to agricultural products.

Report and Recommendations of the International Trade Commission

(New Section 203)

Under current law, within six months of initiating an investigation, the ITC must report its injury determination, the basis therefor, and any separate or dissenting views to the President. If the determination is affirmative, the ITC shall include in the report its findings regarding the amount of the increase in, or imposition of, any duty or import restriction necessary to prevent or remedy such injury or, if it determines that trade adjustment assistance can effectively remedy such injury, a recommendation to provide such assistance.

The Committee bill requires that, if the ITC finds that a domestic industry is being seriously injured by increased imports, the ITC shall include in its report to the President its recommendation on actions, if any, that are likely to assist the domestic industry in making a positive adjustment to import competition. A positive adjustment is defined under the Committee bill as occurring when an industry is able to compete successfully with imports after the actions taken end or when an industry experiences an orderly transfer of resources to other productive pursuits. The bill states that a domestic industry may be considered to have made a positive adjustment even though the industry is not of the same size and composition as it was at the time the petition was filed. The purpose of this provision is to assure that actions taken under this statute will contribute to making the United States more competitive. Therefore, the Committee intends the ITC to interpret the term "positive adjustment" in a manner consistent with the overall purpose of this statute.

The ITC may recommend any of the following actions, or a combination thereof, that the President is authorized to take under new section 204(d)(1) of the 1974 Act: A tariff imposition or increase; a tariff-rate quota; a quantitative restriction; trade adjustment assistance; antitrust law exemptions; Federal regulatory relief; and multilateral negotiations. The ITC shall also recommend the time period for which such actions should be taken (not to exceed 10 years) and the phasing down of such actions.

The Committee believes that import relief assists an industry in making a positive adjustment when it is being seriously injured by increases in imports. Therefore, the Committee expects that, while the ITC may recommend any of the actions authorized by this bill, its recommendation in most cases will include import relief in the form of tariffs, quotas, or tariff-rate quotas. However, if the ITC finds, in light of the plan, commitments or other information, that import relief is not likely to assist in a positive adjustment, the Committee anticipates that the ITC will not recommend it. Any import relief recommended may not exceed the amount necessary to prevent or remedy the serious injury, or threat of serious injury, caused by the increased imports. The purpose of this limitation is to assure that any import relief provided is consistent with United States obligations under the GATT.

In recommending actions other than import relief, the Committee bill requires the ITC to consider whether there is a sufficient likelihood of such action being obtained. The purpose of this provision is to avoid situations where the ITC would recommend actions, for example, antitrust or regulatory relief, when the agencies responsible for granting such relief or the Congress would be unlikely to provide it. The Committee believes such situations can be avoided through the consultation process between industry and Government.

The Committee bill requires the ITC to take into account in making its recommendation the objectives and actions, including the nature and extent of import relief, specified in the adjustment plan and the confidential commitments obtained by the ITC. The Committee intends the plan and commitments to have a strong influence on the ITC's recommendation. If members of the industry have not demonstrated clearly that they are willing to undertake significant efforts to make a positive adjustment, the Committee expects that the ITC will have great difficulty in recommending actions for the President to take that will assist such an adjustment. The Committee strongly believes that action under this section should ordinarily be taken only when members of an industry demonstrate that they deserve such special assistance. Presidential action to provide import relief does not mean that the firms and workers in the domestic industry have less of a responsibility to take their own actions to help the industry become competitive. In fact, the provision of special assistance by the Federal Government increases the industry's responsibility.

The Committee bill requires the ITC to make its report to the President 180 days, or approximately 6 months as under current law, after the filing of a petition, or request for investigation. The ITC is also required to hold a public hearing on the recommendation it is required to make. The Committee bill adds requirements that the ITC transmit to the President with its report the plan and commitments obtained and that the report include a description of the short- and long-term effects implementation of the actions recommended is likely to have on domestic industries that consume the product of the injured industry, other domestic industries, and consumers. The purpose of this provision is to ensure that the President has information relevant both to the immediate action he must take and to monitoring of the industry's performance in the future.

Under current law, it is not specified whether all members of the ITC are eligible to vote on the recommendation to the President, regardless of whether they agreed with the majority regarding the injury determination. Until recently, the ITC's longstanding practice was that only those members of the ITC voting affirmatively on injury participated in the relief recommendations. Consistent with this practice, the Committee bill allows only those members of the ITC who agreed with the majority's affirmative injury determination to vote on the recommended actions. The purpose of this provision is twofold. First, by precluding from the recommendation those members that disagreed with the majority of members on the

ITC, the likelihood of actions being recommended that will assist a positive adjustment is increased. The Committee is concerned that the opinions of members who disagree with the injury finding will skew the recommendation and therefore result in a less effective recommendation. Second, the provision improves the likelihood that the ITC will make a unified recommendation to the President regarding actions to be taken. Since the President relies more heavily on the ITC's recommendation under the Committee bill than under current law, the Committee believes that it is important to have a consensus from the ITC on the actions recommended.

Action by the President

(New Section 204)

Under current law, within 60 days of receiving an ITC report finding that increased imports have been a substantial cause of serious injury, or threat thereof, to a domestic industry, the President must provide import relief unless he determines that import relief is not in the national economic interest.

In determining whether to provide import relief, and the method and amount of such relief, the President takes the following factors into account under current law, in addition to other considerations he may deem relevant:

(1) Advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive, adjustment assistance;

(2) Advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive, adjustment assistance;

(3) The probable effectiveness of import relief in promoting adjustment, and efforts being made, or to be implemented, by the industry to adjust to import competition and other considerations regarding the industry's position in the national economy;

(4) The effect of import relief on consumers and on domestic competition;

(5) The effect of import relief on the international economic interests of the United States;

(6) The impact on U.S. industries as a consequence of our trading partners' right to compensation;

(7) The geographic concentration of the imported products marketed in the United States;

(8) The extent to which the United States market is the focal point for exports of such articles by reason of restraints on exports of such articles to, or imports of such articles into, third country markets; and,

(9) The economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

Under current law, if the President decides to provide import relief, he shall provide relief that, and for such a time not to exceed 5 years as, he determines necessary to prevent or remedy serious injury and facilitate the industry's orderly adjustment to new competitive conditions. He may take any of the following actions:

(1) Proclaim a tariff imposition or increase;
(2) Proclaim a tariff-rate quota;
(3) Proclaim a quantitative restriction;
(4) Negotiate, conclude, and carry out orderly marketing agreements; or,
(5) Take any combination of such actions.

The President may also direct the Secretaries of Labor and Commerce to give expeditious consideration to applications for adjustment assistance by firms and workers in the industry. If the ITC recommends adjustment assistance, the President must direct such consideration.

Relief may be extended by the President under current law for an additional three years, if, after taking into account advice from the ITC, he determines such extension to be in the national interest. On the day on which the President determines whether or not to provide import relief under this statute, he must report his decision to Congress, including his reasons for that decision and, if he decides not to provide relief, any steps he is taking to help the industry overcome serious injury and the workers find productive employment. If the President decides to take action differing from that recommended by the ITC, or to provide no relief, Congress may override that decision by enacting a joint resolution disapproving the President's action within 90 days of receiving his report, in which case the President must implement the ITC's recommendation within 30 days of the joint resolution.

Current law requires any import relief under this section to be proclaimed and take effect 15 days after the President makes his determination, unless he decides to negotiate an orderly marketing agreement in which case import relief shall be proclaimed and take effect 90 days after his determination.

The Committee bill requires, under new section 204 of the 1974 Act, the President to proclaim or order the actions recommended by the ITC, or substantially equivalent actions, with 60 days of receiving the ITC's report, unless the President determines that such action would endanger the national security of the United States, or be a substantial cause of serious injury to any domestic industry that consumes the product of the domestic industry that has been found to be seriously injured.

If the members of the ITC are not unanimous regarding recommended actions, the Committee intends the President to implement the recommendation that was supported by the largest number of members. If two or more recommendations have the support of an equal number of members, the President may choose among such recommendations. For example, if two members support one recommendation, two members support a second recommendation, and one member supports a third recommendation, the President could choose from the first two recommendations.

The Committee bill expands the actions that the President is authorized to take under new section 204 to include actions other than the import relief measures authorized under current law. The

President is authorized to take the following non-trade actions as well as the import relief actions authorized under current law:

(1) Direct the Secretaries of Labor and Commerce to certify workers and firms in the injured industry as eligible for adjustment assistance;

(2) Direct the Attorney General of the United States to review, in consultation with the Secretary of Commerce, domestic firms' applications for exemption from United States antitrust laws;

(3) Direct the head of any Executive Branch agency to review domestic firms' applications for Federal regulatory relief; and,

(4) Initiate multilateral negotiations to address conditions not susceptible to multilateral solution, such as global oversupply, diversion, or imports due to government targeting.

The President may proclaim or order such non-trade actions in addition to the actions recommended by the ITC to the extent that he determines such actions are likely to assist the industry in making a positive adjustment to import competition.

If the President directs the Attorney General to review applications for antitrust law exemptions, any firm that is part of the domestic industry subject to the determination may apply to the Attorney General for exemption from section 7 of the Clayton Act, section 2 of the Sherman Act, and section 1 of the Sherman Act insofar as it applies to mergers and acquisitions. The Attorney General, in consultation with the Secretary of Commerce, shall grant the exemption sought upon determination that:

(1) The application is made by members of the industry found by the ITC to be seriously injured or threatened with serious injury;

(2) The action for which exemption is sought is reasonably related to enhancing competition with foreign competitors to whom market share has been lost and outweighs any adverse impact on the domestic market; and,

(3) The specified action would not violate other provisions of the antitrust laws for which exemption cannot be requested.

If the President directs an agency head to consider applications for Federal regulatory relief, any firm that is part of the industry subject to the determination may apply to any agency head for regulatory relief. Such agency head shall conduct an expedited review of the regulatory requirement imposed by a statute or regulation of the United States applying to the domestic industry and determine whether:

(1) The application is made by members of the industry found by the ITC to be seriously injured or threatened with serious injury; and

(2) The action from which relief is sought is reasonably related to enhancing competition with foreign competitors to whom market share has been lost and outweighs any adverse impact.

If such determinations are affirmative, the agency head shall take appropriate and feasible action within his authority to alter, ease, or eliminate such requirement or, if such action is not in his power, and recommend to the President and the Congress appropriate action or legislation. Information filed pursuant to this provision shall be exempt from the Freedom of Information Act and shall not be made public except as may be relevant to any administrative or judicial proceeding.

If the ITC finds serious injury and recommends the provision of trade adjustment assistance to firms and workers in the industry, the Committee bill requires the President within 30 days of receiving the ITC's report to direct the Secretary of Labor in the case of worker assistance or the Secretary of Commerce in the case of firm assistance to certify the worker or firms in the industry as eligible for trade adjustment assistance.

In determining whether to take non-trade actions, or determining the substantial equivalent of the ITC's recommendation, the President shall consult with the Trade Policy Committee and consider:

(1) The petitioner's adjustment plan and any confidential commitments made to the ITC;

(2) Advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive, adjustment assistance;

(3) Advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive, adjustment assistance;

(4) The probable effectiveness of actions as a means of promoting a positive adjustment;

(5) The efforts being made, or to be implemented, by the industry to make a positive adjustment and other considerations regarding the industry's position in the national economy;

(6) The effect of action on consumers and on domestic competition;

(7) The efforts of firms to provide retraining to workers in the industry; and,

(8) The potential for circumvention of such actions.

The Committee recognizes that this bill reduces Presidential discretion in deciding whether to provide import relief, when recommended by the ITC, as compared to current law. However, in light of the greater demands that the Committee bill puts on members of the domestic industry to demonstrate that they will make make efforts toward a positive adjustment and the fact that the ITC is to recommend the actions that will assist such an adjustment, the Committee believes it is more likely that import relief under the Committee bill will promote positive adjustment than will import relief under current law. However, such relief cannot have this desirable impact in the absence of close consultation between industry, workers, and the Administration. Mandating Presidential action in some affirmative cases, as the Committee bills does, assures that the Executive branch will play an active role in promoting positive adjustment.

Moreover, a limitation on Presidential inaction is necessary to offer the industry some assurance that, if it meets the higher standard for action in the Committee bill, action will be more likely than under current law. The Committee believes this statute must be made more attractive as a mechanism for import relief in order to encourage domestic industry to use it as the mechanism of choice, as the Committee believes is appropriate, rather than seeking import relief outside the program.

Similarly, the Committee is expanding the menu of actions that may be taken under this section to assist an industry in making a positive adjustment so that the statute will be more effective. Both Federal regulatory requirements and U.S. antitrust law can impair or enhance an industry's competitiveness. If these Federal actions help render a U.S. industry vulnerable to foreign competition, particularly because the industry's foreign competititors are often not subject to similar restrictions, then a change in these regulations should be made. The Committee does not intend antitrust exemption to be used by an industry for anticompetitive purposes in domestic competition. It should only be made available to the extent that it assists industries to be more competitive internationally or to transfer resources to more productive pursuits. The inclusion of multilateral negotiations among authorized actions will enable the President to enter into multilateral negotiations designed to address or allevate the causes of serious injury. The Committee is including this provision because it recognizes that in some cases injury cannot be remedied through unilateral action by the United States.

The purpose of the provision requiring certification for trade adjustment assistance when it is recommended by the ITC is to avoid the time-consuming process of certification for eligibility that is normally required before individual firms or workers may apply for and receive trade adjustment assistance. The Committee believes that, if an industry has been the subject of an affirmative injury determination under this statute and the ITC finds trade adjustment assistance will assist a positive adjustment, the timely provision of such assistance is crucial to a positive adjustment. The Committee believes that the adjustment process is best accomplished if unemployed workers that qualify for trade adjustment assistance enter the program early and receive training appropriate to finding productive new employment.

The Committee recognizes that there may be situations in which the President should not take the action recommended by the ITC. The two situations identified by the Committee as justifying a Presidential decision not to act relate to the national security and serious injury to an industry consuming the product of the injured industry. The Committee does not intend these exceptions to be interpreted in an overly expansive manner, but it does believe that they reflect legitimate reasons for the President not to act, despite the fact that the industry will have met a higher standard than under current law and demonstrated its willingness to help itself.

The Committee recognizes that, in some cases, the provision of import relief may, because of U.S. obligations under the GATT, lead to demands for compensation by exporting countries. The Committee did not provide the President authority to refuse to act on an ITC recommendation if he feared retaliation from abroad for actions under the Committee bill because that would encourage threats of retaliation. However, the Committee anticipates the President will use his discretion under the bill to avoid retaliation through compensation and substantially equivalent actions.

For example, the Committee believes that the President should, whenever possible, negotiate orderly marketing agreements to provide the import relief recommended by the ITC, or its substantial equivalent. The Committee believes that orderly marketing agreements can provide the import relief that will promote a positive adjustment in a manner consistent with our international obligations.

The Committee bill retains the provisions in current law requiring the President to report his decision to Congress and allowing Congress to override the President's decision by passing a joint disapproval resolution.

Monitoring and Review of Actions Taken by the President

(New Section 205)

Under current law, so long as import relief is in effect, the ITC is required to keep under review industry developments (including the progress and specific efforts of firms to adjust to import competition) and, upon request of the President, report to him on such developments. If the President determines, after receiving advice from the ITC regarding its judgment of the probable economic effect on the industry of extending, reducing or terminating the import relief and after seeking the advice of the Secretaries of Commerce and Labor, that reduction or termination of import relief provided is in the national interest, he may reduce or terminate such relief.

The Committee bill expands the monitoring provisions of current law to ensure that, when the President acts under this section, domestic industries undertake adequate efforts to make a positive adjustment. The bill provides that the ITC monitor developments with respect to the industry, including the progress and specific efforts of firms and workers to make a positive adjustment. At the President's request (but no earlier than three years after the President takes action to assist the industry to make a positive adjustment), the ITC shall submit a report to the President on its monitoring of the domestic industry. In the course of preparing this report, the ITC shall hold a public hearing. The Committee bill authorizes the President to reduce, modify (but not increase), or terminate actions taken if he determines, taking into account the ITC's report, and after seeking the advice of the Secretaries of Commerce and Labor, that the firms and workers in the domestic industry, taken as a whole, have not made an adequate effort to make a positive adjustment. Such monitoring would continue thereafter, as long as such action continues to be taken, and the ITC would submit additional reports to the President, as directed by him, but not more frequently than every three years.

The Committee bill also adds a provision requiring the ITC to evaluate the effectiveness of actions taken by the President under section 201 after their termination, including holding a hearing. The ITC shall report to the President and the Congress on its evaluation within six months of the termination of the actions.

The Committee believes that the monitoring of an industry's performance and its efforts to make a positive adjustment are crucial to the purpose of this bill. These are the provisions that will ensure that this section of U.S. trade law contributes to enhancing the competitiveness of the American economy. The Committee believes that the continuation of actions taken by the President, based on commitments from the members of the industry to make a positive adjustment, should be contingent on the efforts of the firms and workers after they receive relief. In fact, post-relief performance is more critical than pre-relief promises. The Committee does not intend that actions taken, in particular any import relief provided, continue over the full term intended if firms and workers do not live up to the commitments they made to receive such relief.

The Committee expects that both the petitioner's plan and confidential commitments from individual members of the industry to the ITC will form the basis for the ITC's monitoring and the President's judgment of the industry's efforts. The President should consider the efforts of the firms and workers in comparison with commitments made.

The Committee expects the President to determine whether the firms and workers have made an adequate effort to make a positive adjustment in the context of general economic conditions. The Committee does not anticipate that the President would terminate actions taken because the industry was having difficulty because of, for example, a serious downturn in the United States or international economy. Firms and workers should be judged on their efforts given the economic environment.

The Committee is concerned about the level of compensation, particularly executive compensation, in industries that are granted import relief and circumstances in which management divorces its own fate from that of its workers. To address this concern, the Committee intends that the President consider, in monitoring an industry's efforts toward positive adjustment, reductions in salaries and bonuses for management and labor, an industry's progress in narrowing the relative pay scales between management and labor and the degree to which it has compensated executives in the form of salary increases, benefits, and bonuses.

Because the Committee is concerned about efforts to circumvent actions taken under this section, the Committee bill authorizes the President to take such additional actions as may be necessary to eliminate any circumvention of such actions. The purpose of this provision is to empower the President to adapt the actions if their effectiveness is being undermined. The Committee intends that the President use this authority to prevent circumvention of actions taken, including, if appropriate, broadening the scope of his action. The Committee intends such broadening to be consistent, however, with the industry that was the subject of the original ITC injury investigation and to seek the advice of the ITC regarding the definition of such industry, as necessary.

Effective Date

The provisions of the Committee bill would apply to any investigation initiated under section 201 after enactment of this Act.

AUCTION QUOTAS

(Section 202)

Under current law, the President has broad authority to auction import quotas. Section 1102 of the Trade Agreements Act of 1979 provides that the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. An import license is defined under this section to include any documentation used to administer a quantitative restriction imposed or modified after July 26, 1979, the date of enactment of the 1979 Act, under:

(1) Section 125, 203, 301 or 406 of the Trade Act of 1974;

(2) The International Emergency Economic Powers Act;

(3) Authority under the headnotes of the Tariff Schedules of the United States, but not including any quota imposed under section 22 of the Agricultural Adjustment Act of 1956;

(4) The Trading with the Enemy Act;

(5) Section 204 of the Agricultural Act of 1956, other than for meat or meat products; or,

(6) Any Act enacted explicitly for the purpose of implementing an international agreement to which the United States is a party, including such agreements relating to commodities but not including any agreement relating to cheese or dairy products.

This section of the Committee bill establishes a pilot program of auction quotas, to be imposed in the next three cases in which the President imposes quotas or OMAs under section 205 of the 1974 Act, as amended by this bill. The Committee recognizes that auction quotas are a somewhat untested idea in the United States. Therefore, it feels that it is most appropriate at this time to establish a pilot program.

The Committee bill requires the Secretary of the Treasury to issue and use import licenses in administering each of the first three quantitative limitations imposed under this subtitle after enactment of this Act. The import licenses shall be auctioned by the Secretary of the Treasury at a public auction. The first auction for any given quota shall be held within 30 days of the President's determination to impose a quota or OMA under section 205, but no earlier than 15 days after notice of the auction is published in the Federal Register. The President need not issue and use import licenses or auction such licenses in the cases described above if he determines that:

(1) The auctioning of the import licenses itself would result in foreign retaliation against substantial U.S. exports;

(2) The costs of administering an auction would outweigh the additional revenues gained; or,

(3) The auction cannot be administered in a manner which will prevent any person from obtaining undue market power or abusing existing market power in the U.S. markets through the use of the quota auction.

The proceeds from the auctions shall be used to cover the administration of the auction and to fund trade adjustment assistance.

Within 60 days after the enactment of this Act, the Secretary of the Treasury shall prescribe regulations governing the administration of the auctions. The Secretary is authorized to prescribe, on an expedited basis, supplemental regulations necessary to address factors involved in any of the three specific auctions. The licenses shall be auctioned on a percentage of import value basis and licenses auctioned shall be freely transferable, unless the Secretary of Treasury certifies to Congress that it is not in the national interest to do so. The Secretary of Treasury shall conduct a study of the administration and effect of each of the three auction quotas after they have been completed. The report shall be completed within 60 days after the import limitation expires. These reports shall contain recommendations regarding whether auction quotas should be employed in future cases.

The Committee is concerned that quota premiums too often go to foreign producers under current quota systems. Auction quotas are intended to ensure that the U.S. retains more of the benefits of U.S. quotas. The Committee does not believe it is always appropriate to impose quotas, but it does believe that the U.S. should receive maximum benefits from quotas when they are imposed.

Auction quotas should be imposed pursuant to this section, unless the President determines that any of three specific exceptions apply. First, the President has authority not to impose auction quotas if the auctioning itself, as distinguished from the quotas, are likely to lead to substantial retaliation. Second, the President would not be required to auction if the costs to the federal government of administering the auction would outweigh the revenues gained. Finally, the President would not be required to auction if the auction could not be administered without giving one person undue market power. For purposes of this section, a "person" may include not only any actor or limited group of actors, but also any foreign supplier country, or group of countries, as well as any importers and U.S. retailers.

This section is not intended to force inequitable arrangements among U.S. retailers and importers. In administering this section, the Treasury Department should devise regulations intended to avoid such results, consistent with the provisions of this section and the goal of testing the auction quota concept.

The revenues from auction quotas can be used to help the affected domestic industry adjust to increased import competition. Therefore, this section provides that the revenues from the auctions are to be committed to the Trade Adjustment Assistance program. It is the Committee's intention that these revenues should, if possible, be committed to workers in the affected domestic industry. This would help that industry adjust and decrease the likelihood that the industry would need further trade protection in the future.

SUBTITLE B. TRADE COMPETITIVENESS ASSISTANCE

In the Trade Expansion Act of 1962, Congress established a program of worker adjustment assistance in the belief that the special nature of employment dislocation resulting from changes in trade policy necessitated a level of worker protection beyond what is available through regular State unemployment insurance programs. Congress recognized that, if the United States maintained an open trading system in order to gain from the overall benefits of trade, increases in imports were likely to result in economic dislocation to workers and firms. By creating an adjustment assistance program, Congress accepted the Federal Government's special responsibility to ease the dislocation and adjustment that would occur because of an open trading system.

In light of an unsatisfactory experience with the 1962 legislation, Congress provided a new trade adjustment assistance (TAA) program in the Trade Act of 1974 with eased qualifying criteria and a streamlined petitioning process. The changes introduced by the 1974 legislation resulted in a significant expansion of the TAA program in the late 1970's. With the onset of the recession and certification of a large number of workers in the automobile industry in 1980, the program expanded dramatically when 684,766 workers were certified for TAA and over $1.6 billion was paid out in cash benefits.

Upon taking office, the Reagan Administration proposed major changes in TAA, which were enacted in the Omnibus Budget Reconciliation Act of 1981. The effect of these changes was to curtail substantially the trade adjustment assistance program. Cash benefits paid under TAA dropped to $40 million by fiscal year 1985.

Because of record trade deficits and increasing import competition, the Committee believes that adjustment assistance is more important than ever. The experience with TAA since 1980 has led the Committee to adopt a new program of trade competitiveness assistance that will promote positive adjustment by expanding eligibility and requiring retraining as a condition for benefits. While the Federal Government has a responsibility to ease the immediate impact of dislocation because of increased imports, the Committee believes that the worker has an obligation to prepare for new employment. Through the trade competitiveness assistance program, the Federal Government can encourage workers in their efforts to learn new skills and improve their living standards.

The Committee anticipates that the costs of the trade competitiveness assistance program will be higher than the TAA program. Because the Committee believes that facilitating the adjustment process serves the interests of the international trading community, it proposes to fund the program through a small fee on imports.

ELIGIBILITY OF WORKERS AND FIRMS

(Section 211)

Under current law as applied to workers, a petitioning group of three or more workers in a particular firm is eligible for relief if (a) a significant number of workers in the firm have been or are threatened to be partially or totally laid off; (b) sales or production of the firm have decreased absolutely; and (c) increased imports of directly competitive articles have "contributed importantly" to the first two events. When the Secretary of Labor has determined that a petitioning group of workers is eligible for relief, then individual workers qualify for benefits if they have first exhausted available unemployment benefits and meet certain other criteria.

A firm becomes eligible for benefits if (a) a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to be totally or partially separated; (b) sales or production of such a firm have decreased absolutely; and (c) increases of imports of articles like or directly competitive with articles produced by the firm contributed importantly to such total or partial separation or the threat thereof, and to the decline in sales or production. An eligible firm may receive trade adjustment assistance benefits if the Secretary of Commerce determines that the firm's adjustment proposal is reasonably calculated materially to contribute to the economic adjustment of the firm; the proposal gives adequate consideration to interests of the workers of the firm; and the proposal demonstrates the firm will make all reasonable efforts to use its own resources for economic development.

The Committee bill expands eligibility for trade adjustment assistance in two respects.

First, the Committee is facilitating the availability of trade adjustment assistance for workers and firms in the oil and gas industry. This language is necessary because the Department of Labor has been narrowly construing the act so as to deny benefits to a number of workers who have been laid off in the oil and gas industry due to increased imports. For example, last year, the Department of Labor received 30 oil and gas related petitions for certification from Louisiana, 11 of which were approved. Similarly, the Department received 40 oil and gas related petitions from Oklahoma, of which only four were approved. To rectify this situation, the Committee is clarifying that the oil and natural gas chain, from exploration to refining, is one primary industry.

Furthermore, by extending trade adjustment assistance to workers and firms that provide essential goods and essential services to the oil and gas industry, it is the intent of the Committee to provide such assistance to the traditional suppliers of the oil and natural gas industry. By traditional suppliers the Committee intends to include those workers and firms that provide essential goods or services to the industry, such as mud suppliers, drill bit suppliers, seismic companies, crew boat companies, board suppliers, pipeline installation companies, helicopter operations and others.

With respect to the oil and natural gas industry, it is expected that the Secretary of Labor in instituting an investigation would include in that investigation the appropriate firm(s) or appropriate subdivision(s) thereof that provide essential goods or services to the firm(s) or subdivision(s) thereof that produce the final article that is like or directly competitive with the import.

The second change made by the Committee relates to the eligibility of workers and firms that are indirectly impacted by increased imports. Under current law, only those firms and their workers that produce articles directly competitive with the increased imports are eligible for assistance. This provision would expand eligibility to encompass not only those directly affected firms and workers, but also those firms and their workers that provide essential goods or services to directly affected firms.

Trade adjustment assistance is currently unavailable to workers and firms that meet the first criteria for eligibility, but do not meet the third criteria because the increased imports that contributed importantly to significant layoffs and reduced sales or production by a firm were not directly competitive with the articles produced by the firm. For example, if workers in a textile plant producing corduroy fabric are laid off because of increased imports of corduroy apparel, trade adjustment assistance may not be available for such workers. Trade adjustment assistance would be denied because the imports that caused the layoffs are of corduroy apparel, rather than fabric. The Committee believes that, where there is evidence of a strong link between a firm producing articles directly competitive with imports and its suppliers, trade adjustment assistance should be available to workers and firms in the supplying industry.

Furthermore, there is no apparent justification for distinguishing workers and firms eligible for trade adjustment assistance based on the economic organization of firms. For example, current law would provide trade adjustment assistance to workers producing door handles for automobiles when those workers are employed by the auto producer, but not when the workers producing the door handles are employed by an outside contractor for the auto manufacturer. This provision would end an arbitrary distinction between such workers based on whether they were employed directly or indirectly by a firm impacted by imports.

For the purposes of this provision, the Committee intends the term "goods" to include parts, materials, and components.

NOTIFICATION OF TRADE ADJUSTMENT ASSISTANCE TO WORKERS

(Section 212)

Although current law requires the Secretary of Labor to provide information to workers about trade adjustment assistance, this notification is often insufficient to inform workers of their eligibility for benefits, particularly when workers do not live near their places of employment. The Committee bill requires the Department of Labor to mail notices to eligible workers and to publish notice in general circulation newspapers in the area of the certified plant.

CASH ASSISTANCE FOR WORKERS

(Section 213)

Under current law, after a group of workers has been certified as eligible for assistance, individual workers qualify for cash benefits (called Trade Readjustment Allowances) if they have first exhausted available regular and extended unemployment benefits and meet certain other criteria. The basic benefit under TAA to an eligible and qualified worker is a continuation of the worker's most recent unemployment insurance benefit for the balance of 52 weeks of unemployment. A worker may receive an additional 26 weeks of benefits while he participates in approved training.

The Committee bill adds a new requirement for workers to qualify for cash benefits. The new requirement is that a worker be enrolled in a training program approved by the Secretary or have completed such a program after separation or partial separation from the adversely affected employment. Under this provision, workers who are in or complete training would receive cash benefits for a combined total of 78 weeks, as opposed to current law which provides up to 52 weeks for all eligible workers plus up to 26 weeks for those in training.

If the Secretary determines that a worker qualified by virtue of enrollment in an approved training program has failed to begin participation in or has dropped out of the program without justifiable cause, then no allowance is to be paid until the worker begins or resumes participation in an approved program. The new requirement of enrollment in retraining reflects the Committee's determination that retraining must be the central focus of any effective adjustment program.

A worker may also qualify for cash benefits if certified by the Secretary of Labor as one for whom the Secretary is unable to approve a training program. The purpose of this exception to the general rule requiring enrollment in retraining is to continue benefits to the worker for whom, through no fault of his own, there is no suitable or reasonably available training program. In making this certification determination, the Committee considered that the Secretary should take into account factors such as age and mobility of the worker, and location of retraining programs or work for which the worker could be retrained. A worker certified under this provision would be eligible for extended unemployment benefits up to a combined total of 52 weeks (as under current law), as opposed to a full 78 weeks for a worker who has enrolled in or completed approved training.

If an administering state agency concludes that it is unable to approve a training program for a worker under the requirements of this provision, then the agency must submit to the Secretary a statement certifying that determination. The statement is to provide reasons for the state's determination and should at a minimum detail specific actions taken to locate an appropriate training program. The ultimate certification, however, must be made by the Secretary. Further, the Secretary is to submit to the Senate Finance Committee and the House Ways and Means Committee annual reports on the number of certifications granted to workers for whom appropriate training is unavailable, so that the Committees can assure that the program is administered in accordance with the intent of Congress.

JOB TRAINING FOR WORKERS

(Section 214)

Under current law, if the Secretary of Labor determines that (a) there is no suitable employment available for an eligible worker; (b) the worker would benefit from appropriate training; (c) there is a reasonable expectation of employment after such training; (d) training is available; and (e) the worker is qualified to undertake and complete such training, then the Secretary must (to the extent appropriated funds are available) approve training for the worker. On approval, the worker is entitled to have the costs of training paid by the program. Several types of training may be approved under the program, including on-the-job-training; training provided by a state pursuant to the Job Training Partnership Act; training approved by a private industry council under that Act; and any other training approved by the Secretary.

Section 214(b) of the Committee bill would make approval of training mandatory where the criteria for approval are met. The Committee is not changing the criteria for approval. However, in keeping with its belief that retraining is an important aspect of adjustment, the Committee does not intend for the criteria to be interpreted in an overly restrictive manner. The Committee's expectation is that suitable and reasonably available training can be located or generated for most workers. For them, approval and payment of costs for training would become mandatory.

The Committee expects workers to enter serious and useful training programs. It is concerned about possible abuse of the extension of benefits granted by this provision. The Committee expects workers to enter, and the Secretary to approve, training programs that are of adequate duration and nature to accomplish the purpose of this subtitle. Where appropriate, the Secretary should approve training to provide remedial education and basic skills that are critical to successfully re-entering the work force.

The Committee recognizes that, in certain circumstances, the Secretary may determine that the criteria for approval of training are not met. In such cases, the Committee expects that the Secretary would certify that it is not feasible or appropriate to approve a training program for the worker, and thereby allow the eligible worker to receive cash benefits, although for a shorter period of time than would be provided for the worker that enters an approved training program.

The provision also establishes a new mechanism for delivering the training benefit, by authorizing the Secretary to pay for training either directly or through a voucher. The maximum voucher or direct payment amount is set at $4,000. The Secretary may issue more than one voucher to an adversely affected worker with respect to any particular qualifying separation, but the aggregate amount cannot exceed the $4,000 limitation.

The Committee is also clarifying current law regarding the duration of training programs, the commingling of training funds, and eligibility for benefits during short breaks in training. Section 214(a)(1) of the Committee bill prohibits the Secretary from establishing an absolute limitation on the length of training for the purposes of determining whether to approve training programs. The Secretary is directed to consider, on a program-by-program basis, whether the training is of suitable duration to achieve the desired skill level within a reasonable period of time. Although there is no statutory limit on the length of training programs that may be approved, the Secretary of Labor has placed a 104 week limit on the duration of eligible training programs. Often times, this is not a sufficient time period to retrain a worker adequately for new employment. The Committee believes that a worker that undertakes a longer training program should be eligible for benefits. This provision is not intended to expand benefits normally available to a worker in training beyond the maximum amount of 78 weeks.

The Committee bill also clarifies in section 214(a)(1) that training programs may be approved when they are paid for in part by funds from the private sector or funds from other Federal education and training programs. Because the Secretary of Labor interprets current law to allow the approval of programs only to the extent that appropriated funds are available to pay the total costs of the program, workers are not able to get approval for programs that cost more than the amount the Secretary is able to make available to such worker, but for which the worker may have additional funding sources. The Committee believes that the law should not prohibit, but should encourage, the use of private funds for training and the commingling of TAA training funds with funds from other government sources so that TAA training funds are effective in accomplishing the purposes of this subtitle. The Committee does not intend this provision to conflict with the prohibitions in section 236(a)(4) of the 1974 Act, as amended by this bill, against double funding of training programs. The Committee continues to be concerned about possible abuse of federal funds.

In section 214(a)(2), the Committee bill clarifies that a worker shall be considered as participating in training during any break in training of two weeks or less if the break is provided under an approved training program (for example, a semester break) or if the break is between two approved training programs. The Secretary of Labor interprets current law to prevent the payment of cash benefits during such breaks. As a result, a worker that cannot obtain alternative employment during a short term break in training, perhaps during a holiday season, is denied income support normally provided under trade adjustment assistance. The bill provides for the continuation of benefits where the break in training does not exceed two weeks.

To ensure that eligible workers obtain maximum benefit from training and job-related services, the Committee bill requires agreements entered into under this section with States or State agencies to provide for the coordination of the administration of job training and employment services under the trade adjustment assistance program and other federally supported worker readjustment programs. Because training provided under the trade adjustment assistance program is often administered by a different state agency than training under the Job Training Partnership Act, eligible workers have sometimes been uninformed of opportunities that may be available to them under another program. The Committee is concerned that, because of separate administration, workers are not receiving needed services that are available to them. The purpose of this provision is to improve coordination and cooperation so that workers obtain rapid, effective readjustment and training services.

In section 214(c)(1)(B), the Committee bill requires cooperating state agencies to advise a worker to apply for training when the worker applies for cash benefits and to interview the worker as soon as practicable regarding suitable training opportunities. In administering this provision, cooperating state agencies should advise each eligible worker that training benefits under TAA are available prior to the beginning of cash benefits under TAA. The bill clarifies in section 214(b)(1)(I) that the Secretary may approve training for a qualified worker prior to such time. Based on its belief that early retraining assists in the adjustment process, the Committee intends for the Secretary of Labor to make every effort to assist eligible workers to begin training early in their period of unemployment. While the Committee bill does not require a worker to participate in an approved training program prior to the beginning of cash benefits under TAA, it encourages workers to do so by providing that training taken prior to the beginning of cash benefits meets the new requirement for training.

SEPARATION FROM EMPLOYMENT

(Section 215)

Under current law, an eligible worker may receive cash benefits under trade adjustment assistance for a certain period of time after the worker's total or partial separation from employment following the date specified by the Secretary of Labor's certification of eligibility as the date on which total or partial separation began or threatened to begin. As a result of a change made by the Omnibus Budget Reconciliation Act of 1981, the Secretary of Labor has been interpreting a worker's eligibility period as beginning on the date on which a worker was first separated from employment following the certified date, rather than the worker's most recent such separation.

The Committee bill clarifies in section 215(a) that, for purposes of determining the beginning of a worker's eligibility period, a worker's most recent separation from employment shall be used by the Secretary.

In many cases, the effect of the Secretary's current interpretation is to deny benefits to workers who, after being laid off, are recalled sporadically for temporary periods of employment during the course of closing a manufacturing facility. The Committee believes this interpretation penalizes unfairly workers in firms that close plants gradually, as opposed to firms that close plants abruptly. When workers in such plants finally and irrevocably lose their jobs, they often find they have also lost much, if not all, of their trade adjustment assistance benefits. The purpose of this provision is to correct this situation.

Because the Committee believes that the Secretary's interpretation of the 1981 Omnibus Budget Reconciliation Act precluded many eligible workers from receiving trade adjustment assistance benefits, the Committee bill includes a provision in section 215(b) to waive certain time limitations with respect to any worker otherwise eligible for benefits who became separated from employment between August 13, 1981 (the effective date of the 1981 Budget Reconciliation Act) and April 7, 1986 (the effective date of the Consolidated Omnibus Budget Reconciliation Act of 1985). Workers eligible for trade adjustment assistance because of this waiver would only receive benefits if the worker was enrolled, or had participated, in an approved training program, or if the Secretary of Labor certified that such training was not feasible or appropriate.

SUNSET OF TRADE COMPETITIVENESS ASSISTANCE

(Section 216)

Authorization for the current program expires September 30, 1991. The Committee bill sets a termination date for the program of September 30, 1993.

FUNDING OF TRADE COMPETITIVENESS ASSISTANCE THROUGH AN IMPORT FEE

(Sections 217-218)

The current program is funded through regularly authorized and appropriated funds. The Committee bill would impose a small fee on all imports into the United States for the purpose of funding the trade competitiveness assistance program. The fee is to be set at a uniform ad valorem rate sufficient to provide the necessary funding for the TCA program, but no greater than one percent. The fee is to be assessed on all imports except for articles entered under certain items of Schedule 8 of the Tariff Schedules of the United States. The fee would be adjusted as necessary to fund the TCA program.

Although the import fee is an additional fee that may be considered contrary to United States obligations under the General Agreement on Tariffs and Trade (GATT), the Committee believes that members of the GATT may be receptive to the concept. The President is therefore directed to undertake negotiations to achieve any necessary changes in the GATT to allow the imposition of such a uniform fee on all imports for the purpose of funding adjustment assistance programs.

This provision would also establish, within the Treasury of the United States, a Trade Competitiveness Assistance Trust Fund. The Secretary of the Treasury is to transfer to the Trust Fund, from the general fund to the Treasury, amounts equivalent to those received from the import fee. Transfers are to be made at least quarterly and are to be adjusted for any shortfall or overage in previous transfers.

The Committee bill also provides borrowing authority for the Trust Fund if amounts received from the import fee are inadequate to cover the costs of the TCA program. Funds borrowed from general revenues to cover any such shortfall would be repaid with interest by an increase in the import fee during a subsequent period. The purpose of this provision is to ensure that the fee cover the total costs of the TCA program, as intended by the Committee. The provision would also require an annual report to the Congress on the operations of the Trust Fund and sets out rules governing the investment of such portion of the Fund as is not required to meet current withdrawals.

The Secretary of the Treasury is authorized and directed to pay out of the Trust Fund all expenses incurred by the Secretaries of Labor and Commerce in carrying out the TCA program.

EFFECTIVE DATES

(Section 219)

The provisions relating to oil and gas workers and firms, notification of workers, the duration of approved training programs, breaks in training, the commingling of training funds, coordination of training programs, the appropriate date of separation from employment and waiver of time limitations are to take effect immediately upon enactment.

Also to take effect immediately are the provisions relating to the President's negotiation of any necessary change in the GATT.

The import fee is to be imposed and its related Trust Fund is to be established after the earlier of: (a) two years after enactment; or (b) 30 days after the President submits a statement to the Congress certifying that the GATT allows the sort of fee established in this bill.

The various other substantive changes from current law in the worker program and in the definition of firms eligible to receive technical assistance would not take effect until one year after the import fee is imposed and the Trust Fund is established. On the same date that these changes in the TAA program are to take effect, the Secretary of the Treasury is authorized and directed to begin paying the expenses of the program out of the Trust Fund. Until that time, funding of the program is to come, as under current law, from regularly authorized and appropriated amounts; to that end, the provision extends authorization of appropriations for both the worker and firm programs through fiscal year 1990. However, as noted above, beginning one year after the imposition of the import fee and establishment of the Trust Fund, expenses of the program are to be paid solely from the Trust Fund. The purpose of the one-year lag between establishment of the Trust Fund and payment of expenses out of that Fund is to provide time for the fund to collect sufficient amounts to support the program.

Title III. Unfair International Trade Practices Investigations

SUBTITLE A. MANDATORY RESPONSES TO UNFAIR DISTORTIONS OF INTERNATIONAL TRADE

Chapter 1 of Title III of the Trade Act of 1974 (commonly known as "section 301") provides authority for the President to enforce U.S. rights under trade agreements and to obtain the elimination of unfair trade practices by foreign governments that burden or restrict U.S. commerce. In large measure, section 301 is intended to be a negotiating tool to ensure that foreign countries adhere to their trade agreement obligations benefiting the United States and to obtain the elimination of other unjustifiable, unreasonable, or discriminatory foreign practices. Section 301 authorizes the President to take a broad range of actions as negotiating leverage or as a last resort in retaliating to enforce U.S. rights.

As the Finance Committee worked to frame amendments to section 301, it became apparent that certain concerns were paramount. Principal among these is the perception that the section 301 process needs to be invested with a much greater degree of predictability and certainty than at present. The statute currently affords the President wide discretion, the purpose of which is to allow the President to respond precisely but firmly to unfair foreign trade practices. He has the flexibility to take whatever action is most appropriate to remedy the particular practice or its effect on the United States. Along with this discretion in determining what action to take, however, has come the discretion to take no action. Too often U.S. Presidents have opted to do nothing in the face of provocative foreign trade barriers and trade-distorting practices. As a result, the credibility of U.S. trade policy has suffered. Our trading partners do not know when the United States will act to enforce its international rights and when it will choose to remain passive. This situation merely encourages the perpetuation of the sort of trading practices that section 301 is meant to remedy. The inconstant use of section 301 has weakened the negotiating power of the President under the statute, because other countries know he has the option to do nothing. The Committee strongly believes that more predictable use of section 301 is, therefore, necessary. To this end, this title amends section 301 to render Presidential action more predictable, while at the same time preserving the President's flexibility of action.

The second principal concern addressed by this title is that it takes far too long to conclude the section 301 process in most cases, particularly when section 301 requires resort to the dispute resolution procedures of the GATT or another international agreement. The Committee strongly endorses the use of these procedures, but believes that U.S. companies should not be required to endure protracted delays in getting their grievances heard and resolved. The citrus dispute with the EC, which took 16 years to reach a conclusion, is the most extreme illustration of this problem. Therefore, the Committee's bill adopts new, tighter deadlines for obtaining settlement of disputes or taking retaliatory action.

The third area of concern taken up by the amendments to section 301 is that the statute's enumeration of actionable foreign acts, policies and practices, while intentionally broadly stated, may be so broad as to permit an Administration to overlook situations that are within the scope of the statute and ought to be investigated and remedied. Consequently, this title specifies several additional types of foreign practices as actionable under the statute in order to provide more concrete direction to the USTR and the President. This specification is in no way intended to imply that the full scope of section 301 is in any way abridged, or that any acts, policies, or practices not specifically enumerated are meant to be excluded.

AMENDMENTS TO THE NATIONAL TRADE ESTIMATES

(Section 301)

Section 301 of the bill requires the USTR to expand the annual National Trade Estimate, a survey of foreign trade barriers and distortions required to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means by section 181 of the Trade Act of 1974 as amended in 1984. The USTR must include in the report, in addition to the information required under current law, an estimate of the value of additional goods and services of the United States and the value of additional foreign direct investment by U.S. persons that would have been exported to or invested in each foreign country during the calendar year in the absence of the identified unfair acts, policies, and practices. It also requires the USTR to take into account in making the analysis and estimate the actual increase in the value of U.S. goods and services exported to each country or the value of foreign direct investment in each country during that year. The section also changes the due date of the National Trade Estimate to March 31 of each year beginning with 1988.

The purpose of creating a requirement for a National Trade Estimate in 1984 was to encourage a more active use of the President's power to self-initiate section 301 investigations. It has accomplished that purpose to some extent.

The purpose of expanding the National Trade Estimate is to aid the USTR in making the identifications required under sections 302 (countries that deny adequate protection or market access for intellectual property rights), 303 (countries engaged in a consistent pattern of trade barriers and market distorting practices), and 304 (practices subject to mandatory initiation of investigations) of this bill.

IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE AND EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

(Section 302)

The Committee's bill establishes a comprehensive program, within the overall framework of section 301, to address the growing problem of inadequate and ineffective intellectual property protection, and to address the unique foreign market access problems of U.S. companies that rely upon intellectual property protection. Improved protection and market access for U.S. intellectual property goes to the very essence of economic competitiveness for the United States. The problems of piracy, counterfeiting, and market access for U.S. intellectual property affect the U.S. economy as a whole. Effective action against these problems is important to sectors ranging from high technology to basic industries, and from manufacturers of goods to U.S. service businesses. The list includes manufacturers of semiconductors and other electronic products, motion pictures, books, chemicals, computer software, records, and pharmaceuticals.

There is no provision of law specifically designed to deal with the related problems of inadequate and ineffective intellectual property protection in foreign markets and access to those markets for U.S. intellectual property. The normal procedures available under section 301 may often take too long. Most products that are subject to intellectual property protection have extremely short life cycles. If the problems encountered by these products are not resolved expeditiously, they simply lose their commercial value. Accordingly, an expedited six-month deadline is provided in section 305 of this bill to remedy this procedural shortcoming.

Lack of foreign market access for U.S. intellectual property is an integral part of the international intellectual property problems encountered by U.S. companies. Intellectual property protection and market access problems in foreign markets are often closely intertwined. Foreign governments frequently impose import barriers against U.S. products so that local interests have enough time to pirate the U.S. product, exhaust domestic consumer demand, and thereby foreclose U.S. exports.

The Committee is concerned that foreign protectionist policies are on occasion inappropriately justified by foreign governments as policies to protect "cultural sovereignty." In some instances this includes laws requiring divestiture of U.S. investments in domestic "cultural" industries (*i.e.*, production of books, motion pictures, and recordings). This title will provide the necessary statutory framework to keep foreign markets open, while allowing enough flexibility to take into account the legitimate cultural policies of foreign governments.

Trade-related intellectual property problems are spread over many countries and many sectors. These problems require a broad and comprehensive response. The selection of "priority foreign countries" and self-initiation of section 301 proceedings are intended to be the means to obtain adequate and effective intellectual property protection and to obtain fair and equitable market access for U.S. companies that rely upon intellectual property protection in foreign markets. The knowledge that the USTR will be identifying priority foreign countries, and will self-initiate section 301 procedures against such countries, should motivate countries to improve their protection and market access for U.S. intellectual property in order to avoid being so designated.

Section 302 adds a new section 182 to the Trade Act of 1974. It requires the USTR, within 30 days after the National Trade Estimate is submitted to the Senate Finance and House Ways and Means Committees, to identify and publish in the Federal Register a list of priority foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access to U.S. companies that rely on intellectual property protection.

The countries selected would be those that have the most egregious acts, policies, and practices, offer the greatest potential for increased U.S. exports, and have not entered into good faith negotiations or are not making significant progress in bilateral or multilateral negotiations to provide protection of intellectual property or market access. In making this identification, the USTR is required to consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate Government officials, and to take into account information derived from other sources. In addition to identifications made as a result of the National Trade Estimate, the USTR is authorized to make new identifications or revoke prior identifications on the basis of any information indicating that a change is appropriate.

Identification of a country as a priority foreign country would trigger an investigation by the USTR in accordance with the provisions of section 302 of the Trade Act of 1974, as amended by this bill, subject to two exceptions: (1) when the initiation of the investigation would be detrimental to U.S. national economic interests; or (2) when the foreign country has entered into good faith negotiations to remedy the identified practices.

Failure to designate a foreign country as a "priority foreign country" should not be taken as a determination that the country's acts, policies, or practices are acceptable. Rather, the purpose of the designation is to give the USTR discretion to target the most egregious practices in order to obtain negotiated solutions that satisfy the criteria of the bill.

COUNTRIES MAINTAINING A CONSISTENT PATTERN OF TRADE DISTORTIONS

(Section 303)

This section responds to the Committee's increasing concern that certain foreign countries, most notably Japan, engage in broad and consistent patterns of unfair practices that serve to keep their home markets free of significant competition from U.S. and other foreign firms and to establish economic policies that virtually require their exporters to exploit aggressively the open U.S. market. Such countries proceed in trade on the assumption that their entire national effort must be devoted to running as large a trade surplus as possible. The Committee believes such policies undermine the concessions these countries made to the United States at the Toyko Round (1973 through 1979) and may be the greatest danger to the new Uruguay Round. Therefore, these practices are a special priority for the Committee. The section provides for encouraging such foreign countries to negotiate an end to such mercantilist policies.

Under this section the President is called upon to act to reduce foreign unfair trade barriers and trade distortions. The President is required to initiate negotiations, within 45 days of enactment of this bill, to eliminate all acts, policies, or practices identifies by the USTR in the National Trade Estimate in countries that show a consistent pattern of market distorting trade practices. The section specifically identifies Japan as such a country. By no later than December 31, 1988, the President must report to the Congress on any agreements reached and commitments made by each foreign country pursuant to the negotiations; any evidence of an increase in U.S. exports to each country as a result of elimination of the unfair practices; and any evidence that the level of U.S. exports to the country is commensurate with the level that was reasonably expected to result from the elimination of the practices.

No automatic sanction is provided in the event a country fails or refuses to eliminate its unfair trade practices. The Committee notes, however, that many of the practices targeted for negotiation under this provision will otherwise be the subject of section 301 investigations. The Committee believes that the greater certainty of Presidential action under section 301 brought about by the provisions of this bill will work to give the President considerable leverage in the negotiations required by this section. In addition, the Committee is convinced that without a resolution of the problem of a persistent pattern of unfair trade practices on the trading system, the multilateral negotiations now beginning are in serious danger. The President should be unwilling to reach final agreement in the new Uruguay Round without effective agreement on this subject.

To the extent foreign governments do agree to eliminate barriers to trade and subsequently do not live up to the commitments made in those agreements, the failure to honor those commitments benefiting the United States would be actionable under section 301 as an "unjustifiable" practice.

MANDATORY INITIATION OF CERTAIN INVESTIGATIONS BY THE USTR

(Section 304)

Section 304 of this bill amends the procedural provisions of section 302 of the Trade Act of 1974 to provide for mandatory initiation by the USTR of certain investigations. The provisions of this section are intended to complement actions brought by petitions of private parties.

In the past, section 301 actions have been pursued on an ad hoc, almost sporadic basis. Authority to self-initiate section 301 investigations was first enacted in the Trade Agreements Act of 1979. The Committee believes that, for section 301 to be an effective deterrent to unfair foreign trade practices and an incentive to foreign governments to negotiate an end to such practices, it must be invoked by the USTR and the President with a high degree of consistency. The Committee is particularly concerned that many of the most significant trade barriers, both in terms of the amount of trade affected and the importance of the international legal issues involved, are going unaddressed. The provisions of section 304 of this bill will establish a procedural mechanism for the USTR's undertaking investigations of the more egregious or significant foreign practices that are actionable under section 301 and, when cases are meritorious, will lead to a successful settlement.

The section requires the USTR, on the basis of the annual National Trade Estimate, to initiate investigations with respect to those acts, policies, and practices identified in the National Trade Estimate the pursuit of which will result in the greatest expansion of U.S. exports, either directly or through the establishment of a precedent beneficial to U.S. exports in general. An exception to mandatory initiation of such cases is provided when the USTR determines, after consulting a majority of the representatives of the domestic industry affected by the foreign practice in question, that initiation of the investigation would be detrimental to other efforts being made to eliminate the practice (as, for example, existing bilateral or multilateral negotiations on the subject).

The Committee recognizes that the USTR is granted substantial leeway in identifying the cases that must be self-initiated. No other formulation, however, was believed adequate to identify those foreign practices that, as a policy matter, ought to be given priority, yet avoid the mandatory use of Government resources on cases that would yield minimal economic results. The Committee stresses, however, that it intends this provision to bring about a positive, comprehensive, and ongoing program of initiating and concluding investigations. The flexibility given the USTR is not to be treated as granting an exception or loophole.

The exception for consulting with a majority of the representatives of the affected industry is a narrow one. It applies only when, after such consultation, the USTR concludes that an investigation would harm other efforts being made to rectify the unfair practice. The Committee intends that the USTR apply no strict mathematical formula, either in terms of numbers of firms or market share, in determining the position of "a majority of the representatives" of the industry. The objective of this provision is that the USTR make a reasonable, case-by-case judgment regarding what is acceptable to the industry. If a trade association, group of trade associations, or labor union is consulted, their views should be accorded consideration ratable to the proportion of the industry they represent.

Section 304 also mandates a response to certain intellectual property-based cases identified under new section 182 of the 1974 Trade Act. The denial of intellectual property rights in foreign countries to U.S. owners of those rights is a pervasive problem affecting a broad range of industries, and the Committee has concluded that a program of mandatory initiation of priority intellectual property investigations under section 301 is needed.

The USTR is required under this section to initiate within 30 days a section 301 investigation with regard to any country identified as a priority country that denies adequate and effective protection of intellectual property rights or fair and equitable market access to U.S. firms that are dependent on intellectual property protection, as long as the acts, policies, or practices that are the basis for the identification are not already the subject of another section 301 investigation. Self-initiation is not required in two instances: (1) If initiation of the investigation would be detrimental to U.S. economic interests, or (2) the foreign country has entered into good faith negotiations to remedy the acts, policies, and practices that resulted in the identification of the foreign country as a priority country. However, if the USTR determines that an exception is appropriate and opts not to initiate an action regarding a priority country, he must report to the Congress his reasons, including a description of the U.S. economic interests that would be adversely affected or the progress being made in the negotiations, whichever is applicable. The first of the exceptions to initiation of an intellectual property-based action under this section is obviously broader than any exception provided with regard to initiation of other section 301 provisions. The Committee intends to provide the USTR substantial discretion in applying this exemption, but does not mean for the exemption to swallow the program of mandatory initiation. There must be information substantiating that national economic interests would be harmed, and the required report to the Congress with respect to any exemption applied will act as a check on the USTR.

ACTIONS IN RESPONSE TO INVESTIGATIONS

(Section 305)

This section substantially amends the provisions of section 304 of the Trade Act of 1974. It provides that the USTR is required, on the basis of his investigation, to make a formal determination whether the foreign act, policy, or practice under consideration is an unfair practice actionable under section 301, and, if so, to recommend to the President the actions he should take in response. Under current law, neither the USTR nor the President is ever required to make a formal determination whether the practice investigated is actionable under section 301, unless the President decides to take action. The amendment recognizes that the USTR necessarily makes such a determination in every case, even though it is not now required to announce it formally. This determination should be the province of the USTR, rather than the President, because it is a technical decision calling for the application of USTR's expertise to the provisions of section 301 and the particular practices at issue. This section maintains current law requiring the USTR to seek consultation from the public and appropriate advisory committees prior to making the determination, unless expeditious action is required.

The section provides new deadlines for the USTR's determination and recommendation. In most investigations a determination must be made within nine months of the date of initiation, whether initiated by petition or otherwise. In the case of investigations involving export targeting and those intellectual-property-based investigations self-initiated by USTR against priority countries, however, USTR must reach a determination within six months. The Committee believes that the special or pervasive nature of these kinds of practices calls for more expeditious investigation leading, in meritorious cases, to more prompt action by the President. The time period for intellectual-property-based investigations may be extended by the USTR for up to an additional three months if complex or complicated issues are involved in the investigation that require additional time, the foreign country is making substantial progress in drafting or implementing legislation or administrative measures that will provide adequate and effective protection of intellectual property rights, or the country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights.

Under this section, the USTR's recommendation to the President for action with regard to the foreign practice at issue must be made no later than 30 days before the applicable deadline for Presidential action in the particular case. The delay between the USTR's determination that there is an unfair practice actionable under section 301 and the recommendation of action reflects the recognition that circumstances will change over the course of a proceeding, particularly as a result of consultation under section 303. The Committee believes the USTR should not be required to make a premature recommendation.

The heart of the amendments made to section 301 by this bill is found in the provision of this section requiring the President, if the USTR makes an affirmative determination of an unfair practice, to take whatever actions allowed under section 301 are necessary to enforce all rights and eliminate or offset all acts, policies, or practices that are the subject of the USTR determination. The form of the action taken would remain within the President's discretion. Under current section 301(a)(1), the President is required to take all appropriate and feasible action within his power to redress the unfair foreign act, policy, or practice if he *"determines that action by the United States is appropriate."* The Committee intends that the President, under the amended law, vigorously pursue appropriate action whenever necessary to enforce the rights of the United States under a trade agreement or to respond to other unfair foreign acts, policies, or practices determined by the USTR to be actionable under section 301. Subject to specified exceptions, action is mandatory.

A further curb on Presidential discretion in these cases, designed to further the predictability of the section 301 process, is the provision of mandatory deadlines for Presidential action in all cases. In USTR-initiated cases involving intellectual property rights, the applicable deadline is 30 days after the date of the USTR's affirmative determination, except when the deadline for the USTR determination has been extended to nine months, in which case Presidential action must follow within four months. In most other cases, the deadline is 15 months after the date of initiation of the investigation, extendable for two additional 60-day periods if the President certifies to the Congress that progress is being made to enforce the rights or eliminate or reduce the acts, policies, or practices that are the subject of the affirmative determination by the USTR.

In cases involving a trade agreement with a formal dispute settlement procedure, which procedure section 303(a) of the 1974 Act requires USTR to pursue, the deadline for Presidential action is six months after the issuance of a ruling under the dispute settlement procedure that is consonant with the USTR determination, or 19 months after initiation of the investigation, whichever is earlier. The language of this provision specifies either a preliminary or a final ruling on the dispute. This is to make clear that in a case under GATT procedures, the applicable ruling is a preliminary decision on the merits (rather than a preliminary procedural matter) by a GATT panel of experts, as distinguished from a final ruling by the Contracting Parties of the GATT. In non-GATT cases, there may not be a procedure calling for preliminary decisions; there, a final decision will be the applicable ruling.

The Committee strongly supports resort to the dispute resolution procedures established by the GATT or any other international agreement to which the United States is a party. Section 303 of the Trade Act already requires the USTR to refer section 301 disputes involving trade agreements to the applicable agreed procedures, if any. However, the Committee is concerned that domestic industry sometimes discourages the Administration from using GATT procedures because they frequently lead to protracted delay and continuation of the harm to U.S. firms that the section 301 proceeding was meant to eliminate, particularly in cases involving agricultural products. A delay of 16 years before settlement, as was experienced in the European Community citrus case, cannot be countenanced, nor can a shorter, but still lengthy, delay. Therefore, the Committee has provided that the President must take action at the latest within 19 months of initiation, regardless of whether the settlement process has run its course. This will ensure that a petitioner or other affected domestic firm will not be penalized because resolution cannot be achieved in an expeditious manner, and will, it is hoped, provide an incentive for the international dispute resolution process to be completed more promptly. The Committee believes that the time period chosen is reasonable because, as discussed in a recent GAO report, GATT guidelines for dispute settlement call for a total maximum period of 13 months.

However, the Committee is also concerned that the United States give the international dispute resolution process a fair opportunity to operate. In particular, the Committee anticipated the possibility that any delay in completion of the dispute resolution process might be at the request of, or otherwise be the responsibility of, the petitioner or the U.S. industry involved. If so, this section provides that USTR may extend the applicable deadline by the length of any period of delay occasioned by the petitioner or the majority of representatives of the industry.

Although this section is meant to provide far greater assurance than under present law that the President will act to counter foreign unfair practices, the Committee has provided several limited exceptions to the requirement to retaliate. The first four of these exceptions, applicable to all cases, are when:

(1) The ruling issued as a result of an international dispute resolution proceeding conflicts with the USTR determination of an unfair practice;

(2) the United States and the foreign country involved settle the dispute and the settlement is agreed to by a majority of the representatives of the domestic industry;

(3) the action would cause serious harm to the national security; or

(4) the enforcement of the rights or the elimination of the unfair practice by the foreign country is impossible and the foreign country has agreed to provide the United States with compensating trade benefits.

A fifth exception applies only when the unfair trade practice at issue is "unreasonable" or "discriminatory," or when the investigation was initiated under section 302(c)(3). It does not apply to actions involving alleged "unjustifiable" practices or otherwise dealing with U.S. rights under a trade agreement. This exception is available if the elimination of the practice is impossible and the taking of action is not in the national economic interest.

Conflict with dispute resolution ruling.—As noted above, the first exception applies when the ruling issued by the Contracting Parties to the GATT or other applicable international dispute resolution procedure conflicts with the determination by the USTR that the foreign practice in question violates or is inconsistent with a trade agreement benefiting the United States.

Settlement.—The second exception is when the United States and the foreign country involved enter into a settlement of the dispute and the settlement is agreed to by a majority of the representatives of the domestic industry that would benefit from action taken against the foreign acts, policies, or practices involved. The Committee intends that retaliation in the form of import restrictions is not the preferred outcome of a section 301 dispute, and should not be required if the foreign country has agreed to eliminate the practice satisfactorily or remove its burdensome effect on U.S. commerce. Determination of the position of the majority of the representatives of the industry is to be made consistently with the standard for the similar determination required under section 304(a)(4) of this bill.

National security.—The third exception to mandatory retaliation is when the action would cause serious harm to the national security. Although this exception falls in an area in which the President possesses a uniquely broad scope of action, the Committee intends that it not be abused or invoked casually. A vague or speculative harm to security interests would be clearly insufficient, as would harm to the national "economic" security.

Compensation.—The fourth exception to mandatory retaliation is narrowly drawn. It is to apply when the enforcement of the rights or the elimination of the unfair practice by the foreign country is impossible and the foreign country has agreed to provide the United States with trade benefits in the same economic sector of which the affected domestic industry is a part (or another sector that is as closely related as possible to that sector) that compensate for the denial of such rights or the refusal to eliminate the practice. The Committee wishes to make certain points clear with regard to this exemption. First, the standard of "impossibility" of correcting the foreign act, policy, or practice is a high one; however, it is not meant to connote physical impossibility. Rather, it describes situations that the foreign country cannot remedy even in the face of stiff retaliation by the United States, and in which retaliation would achieve no positive result for the United States or the affected U.S. industry. In such an instance the President would be justified in seeking fully offsetting compensation. However, resort to compensation is to be taken with great caution. The Committee intends that compensation is to be accepted only as a last resort, after the President has exhausted all other avenues of obtaining redress from the foreign country.

Second, as the new statutory language notes, to the greatest extent possible the compensation must be provided in the same economic sector as the U.S. industry affected by the foreign practice, or failing that, another sector as closely related as possible to that sector. Here also it is the intention of the Committee that non-sectoral compensation be accepted only as a final resort. If at all practical, compensation should aid the industry that has suffered as a result of the trade-distorting effects of the foreign practice. The Committee recognizes, of course, that in some cases same-sector compensation is not possible.

National economic interest.—The fifth and final exception applies when the foreign unfair practice at issue is an "unreasonable" or "discriminatory" practice within the meaning of section 301, or when the investigation was initiated under section 302(c)(3). In such cases, if the President certifies to the Congress that the elimination of the practice is impossible (defined according to the same standards as in the fourth exception above), and the taking of action would not be in the national economic interest, then he is not required to take action. Exercise of this exception is intended to be an exceptional, not routine, procedure. Any waiver of retaliation in the national economic interest involves a weighing of the economic costs and benefits and a determination that retaliation would cause greater harm to the national economy than not taking retaliatory action against the foreign practice. The relationship of this exception to the fourth exception, which is based on an identical "impossibility" standard, is that the President is not absolutely required to seek compensation from the relevant foreign government if the practice is not based on rights derived from a trade agreement. The Committee would urge, however, that the President use his discretion to seek to obtain compensation whenever possible.

A further matter addressed by this section is the establishment of a system for terminating action taken by the President under section 301. Section 301 now contains no explicit authority to terminate or modify retaliatory action. This section would require the automatic termination of any retaliatory measure after four years unless the petitioner or any representative of the domestic industry requests continuance of the measure during the last 60 days of the four-year period. The USTR would be required to notify the petitioner and members of the industry of the potential termination prior to the 60-day period. If continuance is requested, the USTR is to conduct a review of the effectiveness of the action and of other actions that could be taken and the effects of such actions on the U.S. economy, including consumers. The USTR is to report to the President and the Congress the results of the review, including any recommendations for Presidential action. Aside from this procedure, the President may modify or terminate retaliatory action at any time if any of the conditions described in subsection 304(b)(3) subsequently occur or the burden or restriction on U.S. commerce caused by the foreign unfair practice has increased or decreased.

Section 305(b) of the bill creates a new section 307 of the Trade Act of 1974. That section provides that if the President, invoking the "national economic interest" exception to the requirement to take retaliatory action, chooses not to act in response to foreign export targeting, the USTR must take action to initiate negotiations with the foreign country to obtain an agreement to eliminate or fully offset the effects of the export targeting or compensate the United States. If negotiations are not successful within a reasonable time, the President is required to establish an advisory panel to recommend within six months of its establishment non-trade measures to promote the competitiveness of the domestic industry affected by the targeting. Taking the panel's recommendations into consideration, the President may take any administrative actions authorized by law and propose any legislative action necessary to restore or improve the competitiveness of the industry.

MISCELLANEOUS AMENDMENTS TO SECTION 301

(Section 306)

Among the foreign practices actionable under section 301 are those that are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. The Committee believes that it should not be necessary for the adverse effect on the United States to blossom fully into an actual burden or restriction before the President is able to act. For this reason, section 306(a) amends section 301(a)(1)(B)(ii) to also make these unfair foreign practices actionable when they threaten to burden or restrict U.S. commerce.

This section also adds a new subsection (e)(7) to section 301 clarifying that the burden or restriction on U.S. commerce may be on U.S. trade with third countries, including the displacement of U.S. exports to the third country or the diversion of exports of a third country to the U.S. The purpose is to make explicit the interpretation of the law accepted currently by the USTR.

Section 306(b) clarifies that among the actions the President can take in response to an affirmative USTR determination of an unfair practice is to enter into binding agreements with foreign countries that fully offset or eliminate any burden or restriction on U.S. commerce. It further provides specific authority for the President to withdraw or not proclaim beneficiary status to a developing country or to deny duty-free treatment to any eligible product or products of a beneficiary developing country under the GSP program of Title V of the Trade Act of 1974 as a form of section 301 action. Both these amendments are meant only to clarify current law.

Section 306(c) of the bill provides an enumeration of several types of practices that are actionable under section 301 as "unreasonable" within the meaning of the statute. Enumeration of these practices is meant to clarify the scope of section 301 in certain regards. It is not to be viewed as excluding from section 301 any other types of foreign acts, policies, or practices.

Section 301(c) first amends section 301(e)(3) to include, in the definition of an "unreasonable" act, policy, or practice that denies fair and equitable market opportunities, the toleration by a government of systematic anti-competitive activities by private firms or among private firms that have the effect of restricting, on a non-commercial basis, access of U.S. goods and services to purchasing by such firms.

This change reflects the growing conviction on the part of the Committee that anti-competitive, market-restrictive behavior on the part of private firms, when coupled with the failure of a foreign government to intervene to eliminate such behavior, can act as a barrier to market access which is as great as any formal government act, policy, or practice alone. This has been particularly evident in such sectors as automobile parts, soda ash, and semiconductors. To the extent such behavior acts as a burden or restriction on U.S. commerce, it would be regarded as an unfair practice which is actionable under section 301.

The inclusion of government toleration of certain anti-competitive private activities as an actionable section 301 act, policy, or practice is not intended to apply broadly to any and all purchasing decisions by private firms. It is intended to apply to government toleration of pervasive or egregious activities in a foreign country by or among private firms which result in a persistent pattern of restricted market access by U.S. firms in a particular industry. This would include situations in which purchasing policies or decisions made by a parent firm in a foreign country affect access by U.S. firms to purchasing by the parent's subsidiaries in other countries.

The amendment requires that the anti-competitive behavior by or among private firms be systematic, be conducted on a basis that is inconsistent with commercial considerations, and that it be tolerated by the foreign government. This would include, but not be limited to, toleration of cartel-type behavior by or among private firms or toleration of closed purchasing behavior on the part of private firms that precludes or limits U.S. access in a concerted and systematic way. In determining whether foreign private firms engage in closed procurement practices, the USTR should examine actual levels of purchases of U.S. goods and services by those firms.

The Committee wishes to emphasize, however, that its intent is not to regulate the business practices of foreign firms or to enforce upon foreign governments U.S. concepts of antitrust law. This provision is meant to allow the USTR and the President to take a flexible approach to these problems, and to attack trade-restrictive activities by foreign private interests only when the foreign government is in essence at least a silent partner to the restrictive practice. In determining whether the criteria of this provision are met, the USTR may continue to take into account, among other things, whether the anti-competitive foreign private activities are inconsistent with local (not U.S.) law; the flagrancy of the activities; and the degree of the effect on U.S. commerce.

Section 306 further amends section 301(e)(3) to make "export targeting" actionable as an "unreasonable" policy or practice. "Export targeting" is defined under new section 301(e)(3)(D) as any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist such enterprise, industry, or group to become more competitive in the export of any class or kind of merchandise.

This definition includes, but is not limited to—

(1) Protection of the home market;

(2) Promotion or tolerance of cartels;

(3) Special restrictions on technology transfer imposed for reasons of commercial advantage;

(4) Discriminatory government procurement or other actions that limit foreign competition in a specific sector or of a specific industry and thereby promote export competitiveness of domestic firms;

(5) The use of export performance requirements that limit foreign competition in a specific sector or of a specific industry and thereby promote export competitiveness; or

(6) Subsidization (as defined in the GATT Subsidies Code).

The inclusion of export targeting within the scope of section 301 authority reflects the growing recognition in the United States that foreign industrial targeting practices can have an injurious impact upon the viability and competitiveness of U.S. industries. Basically, the provision applies to situations where the foreign government has sought to develop a particular industry's export capability by creating a relatively risk free environment to provide a competitive advantage the industry would not otherwise have under normal market conditions. Targeting is different from other potentially trade-distorting practices in that it involves a combination of actions any one of which may have a marginal impact on the industry's competitiveness, but which taken together artificially create a comparative advantage for the selected industry.

At the same time, the provision is not directed in any way against foreign industrial policies per se, which are solely a matter of internal government choice. Rather, it applies only when those targeting practices have the effect of increasing the export competitiveness of a particular industry in a manner that is, or threatens to be, a burden or restriction on U.S. commerce. If such policies cause harm to U.S. industries, they become an appropriate matter for action under U.S. trade laws. In the absence of such a burden or restriction, section 301 authority would not apply.

A further addition to the definition of "unreasonable" is intended to provide explicit authority to remedy foreign government requirements that intellectual property be licensed to the foreign country or to any firm in the country, or that technical information be submitted to the country, as a condition of doing business in that country. Such practices are defined as "unreasonable" to make clear that the Committee intends that the USTR interpret this provision flexibly. In some instances, particularly regarding military procurement by a foreign government, it may be reasonable for a foreign country to require that the technology of the product sold by a U.S. firm be submitted to the buyer in a given transaction.

Section 306 also amends section 301(e)(3) to provide that in determining whether a foreign act, policy, or practice is "unreasonable," reciprocal opportunities in the United States for foreign nationals or firms shall be taken into account as appropriate. The amendment provides that in determining the existence of an "unreasonable" act, policy, or practice, appropriate consideration could be given to the denial by a foreign government of access to the market in that country and opportunities within that market generally reciprocating those available within the United States. Other factors that could be taken into account could be international norms or practices in similar circumstances.

The reciprocity consideration is not intended to be a limiting factor and alone would not necessarily determine whether the act, policy, or practice is "unreasonable." Rather, it is a factor to be taken into account as appropriate.

Thus, even if market opportunities abroad exceed those available in the United States, they nonetheless could be actionable if the foreign government were, for example, violating a trade or other agreement or denying national or MFN treatment. Conversely, even if reciprocal opportunities were *not* provided in a foreign market, there might be a valid basis for concluding that an act, policy, or practice was not "unreasonable." For example, that a country might maintain a higher tariff on a particular product would not *per se* be "unreasonable." The United States might have expressly agreed to that tariff level in exchange for other, greater benefits to other U.S. economic interests.

In this context, the Committee also wishes to emphasize that certain practices of foreign governments not specifically identified in the bill can be considered "unreasonable." These include the failure of governments to grant import licenses on competitively priced products and the maintenance of prohibitions on the importation of goods, in particular agricultural commodities. The Committee recognizes that many governments throughout the world currently engage in these practices. The Committee also recognizes, however, that for certain developing countries, in particular those struggling to reduce their foreign balance of payments deficits, engaging in these practices may not necessarily be considered "unreasonable."

Finally, section 306 amends section 301(e) of the 1974 Act to include in the definition of "unreasonable" a persistent pattern of acts, policies, or practices that deny certain internationally recognized worker rights and burden or restrict U.S. commerce. Such practices are those that (1) deny workers the right of association, (2) deny workers the right to organize and bargain collectively, (3) permit any form of forced or compulsory labor, (4) fail to provide a minimum age for the employment of children, or (5) fail to provide standards for minimum wages, hours of work, and occupational safety and health.

The list specifies the particular worker rights and standards included in the definition and is all-inclusive, not illustrative, of the rights and standards which could be the subject of petitions and potentially actionable under section 301.

This section permits the USTR to determine, when appropriate, that such a pattern of acts, policies, or practices is not unreasonable if he determines that (1) the foreign country has taken or is taking steps that demonstrate a significant and tangible overall advancement in providing such rights throughout the country, or (2) such acts, policies, or practices are not inconsistent with that country's level of economic development.

This provision defines as a practice actionable under section 301 the competitive advantage in international trade that some countries derive from the systematic denial to their workers of basic internationally recognized worker rights. As with other actionable "unreasonable" practices under section 301(a)(1)(B)(ii), the criterion that an action "burden or restrict U.S. commerce" must also be satisfied.

The particular worker rights and standards specified by this provision, while not necessarily subject to an international trade agreement, are each covered by conventions of the International Labor Organization ratified by a large number of countries which in turn are bound to uphold and enforce its provisions. For example, with respect to the right to organize and bargain collectively, 113 countries have ratified International Labor Organization Convention Number 98. While the United States has not ratified these International Labor Organization conventions, each of the rights and standards cited in the definition is protected by the Constitution or subsequent statutes, and is bolstered by case history in the courts.

The Committee intends that this provision be used in a constructive manner to achieve its underlying objectives—namely, the improvement of basic worker rights and standards abroad so as to raise the standards for all workers, broaden the home markets for export-oriented countries, and create new markets for U.S. exports. The Committee stands by these objectives and does not intend the provision to be used for the purpose of closing the U.S. market. For this reason, the Committee has specified that this provision apply to persistent patterns of practices, rather than isolated incidents. Similarly, the Committee intends the provision will be used only in its trade context, and not to deal with worker rights issues that have no trade implications or as a general foreign policy tool. Finally, it is not the intent of this provision to apply U.S. labor laws or to impose U.S. labor standards on other countries, or to define as unfair foreign laws or standards that differ from those in the United States.

The two criteria allowing the USTR not to treat the denial of worker rights as an unreasonable practice in specified instances are designed to enable a flexible, but realistic, application of the worker rights standard. This provision reflects the Committee's recognition that, as in our own social history, the attainment of worker rights can be long and difficult process. One of the criteria allows the USTR to determine not to be unreasonable practices that are not inconsistent with a country's level of economic development. For example, the Committee notes that International Labor Organization Convention Number 138, pertaining to minimum age standards for employment, makes distinctions for differing levels of economic development without undermining its fundamental concern—shared by the Committee—with child labor. Similarly, the provision recognizes that the same minimum wage level, hours of work, or occupational health and safety standards that pertain in developed countries would not necessarily be applicable to advanced developing countries, and the levels and standards applicable to advanced developing countries would not necessarily be applicable to the least developed developing countries.

The criterion allowing credit for steps that a foreign country has taken, or is taking, to afford an overall advancement in worker rights is designed to bolster the Committee's underlying objective in including worker rights language in section 301—namely, the systematic improvement of such rights. It is the intention of the Committee that the steps taken be significant and tangible, not merely token or cosmetic. Such steps forward should be considered in conjunction with any other actions or policies of the foreign government which may demonstrate retrogression in order to make a judgment as to whether there is improvement in the country's overall advancement of worker rights. The Committee does not intend that the demonstrable taking of steps necessarily be limited to those taken during the finite period between the filing of the petition and the USTR determination, but it does intend that there should be overall improvement and advancement toward reaching the objective when judged over a reasonable recent period of time.

As with other petitions filed under section 301, detailed information on the overall worker rights practices of a country may not be available to a petitioner. Therefore, a petition may be filed and an investigation initiated based on a specific denial of worker rights provided the petitioner substantiates the alleged denial and makes a good faith effort to provide information on the country's overall performance with respect to the worker rights criteria of this statute.

Section 306(e) of the bill adds to the definition of "discriminatory" acts, policies, or practices under section 301 trading by a state-owned enterprise on other than commercial terms. This amendment simply clarifies that such practices are actionable under section 301, since they are prohibited by Article XVII of the GATT.

Section 306(f) makes actionable as a practice denying benefits to the United States under a trade agreement any practice that nullifies or impairs the objectives of a trade agreement and unfair trade concessions requirements, which are foreign government requirements that U.S. firms make some special concessions, such as licensing technology or building a foreign plant, in order to be permitted to export to a foreign country. The amendment further provides that the existence of an unfair trade concessions requirement

73-814 O - 87 - 4

may be inferred from the circumstances if direct evidence is not otherwise available.

USE OF EXPORT ENHANCEMENT PROGRAM IN CASES OF ALLEGED UNFAIR AGRICULTURAL TRADE

(Section 307)

Section 307 of the bill amends section 302 of the Trade Act of 1974 to permit the President to employ the Export Enhancement Program to counter unfair trade practices alleged in section 301 petitions involving agricultural commodities. The purpose of this provision is to add to the President's options for action under section 301 the existing authority under the Export Enhancement Program. Under this provision, the USTR, if he has reason to believe the foreign practice may impair or threaten to impair sales of U.S. agricultural commodities or products made from agricultural commodities in the market of any country, shall determine whether the provision of surplus commodities under the program would be an appropriate action to offset the foreign practice. In making this determination, he is to consult with the Secretary of Agriculture and any other appropriate heads of Federal agencies. He is then to report his determination to the Congress and the President and make recommendations to the President for action. If the USTR determination is affirmative, the President is authorized to direct the Commodity Credit Corporation to provide surplus agricultural commodities, to the extent he determines is appropriate, to U.S. exporters, users and processors, and foreign purchasers for the purpose of offsetting the foreign practice. If he decides to take no action, he is to report his reasons to the Congress. Any action taken under this section may be revoked if the USTR ultimately determines that the foreign practice is not actionable under section 301 or the practice is eliminated or fully offset.

COMPENSATION AUTHORITY

(Section 308)

Section 123 of the Trade Act of 1974 currently authorizes the President to enter into trade agreements with foreign countries for the purpose of granting new concessions compensation only for import relief actions under section 203 of that Act. This section expands existing compensation authority to include compensation for actions taken under section 301, but only if the President determines that compensation is necessary to meet the international obligations of the United States. This provision recognizes that there are occasions when providing compensation for a retaliatory action will be necessary in order for the President to honor international obligations of the United States, and he ought to have the authority to do so.

SUBTITLE B. IMPROVEMENT IN THE ENFORCEMENT OF ANTIDUMPING AND COUNTERVAILING DUTIES

The Committee is committed to the vigorous enforcement of U.S. antidumping and countervailing duty laws. In general, these laws have proven to be an effective tool to remedy unfair price discrimination and offset foreign government subsidies. Between 1980 and 1986, 658 petitions for antidumping and countervailing duties were filed with the Department of Commerce on behalf of American industry, resulting in 185 orders establishing antidumping or countervailing duties or agreements suspending investigations. Many other cases, including over 150 petitions involving steel products, were settled with the consent of the domestic industry. The number of petitions and resulting orders and agreements indicates that these laws serve a worthwhile purpose for American industry.

The Committee bill revises the current antidumping and countervailing duty laws to improve their effectiveness. In particular, the Committee is concerned about attempts by foreign exporters to evade the imposition of antidumping or countervailing duties. Several of the provisions adopted by the Committee address this concern.

CRITICAL CIRCUMSTANCES

(Section 321)

The Trade Agreements Act of 1979 established procedures aimed at providing meaningful relief in critical circumstances when an industry is being injured by massive surges of dumped or subsidized imports over a short period of time. However, the critical circumstances provisions of the 1979 Act have proven ineffective, largely because the ITC has had difficulty in applying the statutory criteria. Therefore, the Committee is changing current law to make these provisions more workable.

Under current law, if a petitioner alleges critical circumstances in a timely manner, then the Department of Commerce and the ITC make certain additional findings in their antidumping or countervailing duty determinations. The Commerce Department is required to promptly determine, following the petitioner's allegation, whether there is a reasonable basis to believe that:

(1)(a) in a countervailing duty case, the alleged subsidy is inconsistent with the GATT Agreement on Subsidies and Countervailing Measures; or,

(b) in an antidumping case, there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or the importer knew (or should have known) that the imports were being sold at less than fair value; and,

(2) there have been massive imports of the merchandise under investigation over a relatively short period of time.

Upon such a determination by the Commerce Department, any suspension of liquidation ordered by the Commerce Department under its preliminary determination of subsidies or sales at less than fair value would apply to unliquidated entries of the merchandise subject to investigation entered on or after the date 90 days prior to such preliminary determination.

If the final determination by the Commerce Department is affirmative with respect to both the existence of subsidies or sales at less than fair value and critical circumstances, then the ITC is required to find in its final determination regarding material injury whether:

(1) in a countervailing duty investigation, there is material injury that will be difficult to repair, and the material injury was by reason of the massive imports of the subsidized merchandise over a relatively short period; or,

(2) in an antidumping investigation, the material injury is by reason of such massive imports to an extent that, in order to prevent such injury from recurring, it is necessary to impose antidumping duties retroactively.

If both the Commerce Department and the ITC make affirmative final determinations of critical circumstances, antidumping or countervailing duties will be imposed on all imports of the merchandise subject to investigation that entered during the 90 days prior to the Commerce Department's preliminary determination, for which liquidation was suspended.

The Committee bill makes three changes to current law to make the critical circumstances provisions more meaningful. If the Commerce Department finds a reasonable basis to suspect that critical circumstances may exist, the bill authorizes the Commerce Department to request that the Customs Service compile statistics on an expedited basis on the volume and value of the imports subject to investigation and forward such information to the Commerce Department as directed, but at least every 30 days. The Commerce Department would use this information as a basis for monitoring surges and determining whether critical circumstances exist. A decision by the Commerce Department to request such information would also serve as a warning to importers who are contemplating efforts to avoid potential duties by rushing in large quantities of the merchandise prior to the preliminary determination of subsidies or sales at less than fair value. The Committee intends that such monitoring shall not hinder customs clearance procedures.

The second change made by the Committee bill clarifies that the Commerce Department has the authority to make a preliminary determination of critical circumstances at any time after initiation of an antidumping or countervailing duty investigation. While the Committee believes that the Commerce Department has this authority under current law, the Commerce Department practice is to delay any preliminary finding of critical circumstances until its preliminary determination of subsidies or sales at less than fair value, at the earliest. The Committee believes that findings of critical circumstances should be made promptly as soon as the Commerce Department determines that the statutory criteria are met. Consistent with U.S. obligations under the GATT Codes, the Committee does not intend this provision to result in any suspension of liquidation prior to the Commerce Department's preliminary determination of subsidies or sales at less than fair value.

The third change made by the Committee bill relates to the standard used by the ITC in determining whether critical circumstances exist. Under the bill, the ITC is required to determine whether retroactive imposition of antidumping or countervailing duties appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time and, in countervailing duty cases, that will be difficult to repair. In making this determination, the ITC shall consider whether:

(1) massive imports over a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping or countervailing duties;

(2) foreign economic conditions led to the massive imports;

(3) such foreign economic conditions are likely to persist; and,

(4) the impact of the massive imports is likely to continue after issuance of an antidumping or countervailing duty order.

The ITC has experienced difficulty in applying the critical circumstances provisions in current law because of the imprecise directions given the ITC. As a result, the ITC has issued affirmative determinations of critical circumstances in only two cases since the 1979 Act. By changing the standard used by the ITC, the Committee intends to provide sufficient direction so that the ITC will make affirmative determinations of critical circumstances, where appropriate.

The Committee believes that the critical circumstances provisions in the GATT and U.S. law are designed to address two situations in which the retroactive application of antidumping or countervailing duties is appropriate. First, these provisions are designed to deter efforts to circumvent, or preempt, the application of antidumping or countervailing duties by entering large quantities of imports that are being sold below fair value or subsidized prior to a preliminary determination by the Commerce Department, at which time liquidation of imports is normally suspended if the Commerce Department finds there is a reasonable basis to believe or suspect that the merchandise under investigation is being sold at less than fair value. In essence, the critical circumstances provisions put at risk an importer who enters massive quantities of imports during the 90 days prior to the Commerce Department's preliminary determination when the importer is on notice that the merchandise may be dumped or subsidized.

The second situation addressed by the critical circumstances provisions is created when international economic conditions lead foreign producers or exporters to sell large quantities of dumped or subsidized products in the United States. Where there is serious structural overcapacity or excess supply in the international market, or in the market where the imports are produced, a foreign producer or exporter may choose to sell massive quantities to the United States at less than fair value or subsidized prices. Surges in imports because of such conditions may commence prior to an antidumping or countervailing duty proceeding and recur over time. To the extent that such surges occur in the 90 days prior to the Commerce Department's preliminary determination regarding subsidies or less than fair value sales, they indicate that there may be blatant disregard for the injurious impact that such sales may be having on the U.S. industry.

Because the Committee believes retroactive imposition of antidumping or countervailing duties is appropriate when a massive surge in imports over a relatively short period of time occurs due to the situations described, the Committee intends the ITC to focus on such situations in determining whether the retroactive imposition of duties appears necessary. The ITC only determines whether critical circumstances exist when it finds material injury to an industry by reason of dumped or subsidized imports. Therefore, the Committee believes that any massive surge of such imports during a short period of time in such cases will cause additional material injury. Difficulties in differentiating between the material injury caused by a short-term surge in dumped or subsidized imports and the material injury caused by such imports over a longer term should not result in the ITC finding that the retroactive imposition of antidumping or countervailing duties does not appear to be necessary. In addition, because antidumping and countervailing duties are generally applied prospectively and only offset the amount of the subsidy or the amount by which the sale is below fair value, the Committee believes that material injury due to dumped or subsidized imports prior to the imposition of such duties is usually difficult to repair.

In considering whether massive imports of the merchandise over a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping or countervailing duties, the Committee expects that the ITC would seek to determine whether the increase in imports can be explained by legitimate market factors within the United States, such as increased domestic demand, long-term contracts, interruption of other sources of supply, or seasonal variations, or whether the increase appears to be the result of efforts to avoid potential liability for such duties. In the absence of legitimate market factors to explain the surge, the ITC could reasonably conclude that the increase was an effort to avoid the payment of duties.

In considering whether foreign economic conditions led to the massive imports and whether such conditions are likely to persist, the Committee expects that the ITC will seek information, from both public sources, foreign governments, and parties to the proceeding, to assist it in determining whether there are foreign economic conditions, such as substantial oversupply or serious excess structural capacity, that are likely to lead to sporadic surges in imports.

In considering whether the import of the massive imports is likely to continue after isssuance of the order, the ITC should take into account indications of such impact such as the level and growth of inventories (whether held by domestic producers, importers, or, to the extent information is available, purchasers), the price effects of such inventories, and the overall economic state of the industry.

TRANSACTIONS DESIGNED TO EVADE PAYMENT OF ANTIDUMPING DUTIES

(Section 322)

Under current law, the importer of record is liable for the payment of antidumping duties. Section 738 of the Tariff Act of 1930 prohibits any customs officer from delivering merchandise subject to an antidumping order to the person by whom or for whose account it was imported unless that person deposits with the appropriate customs officer the estimated antidumping duty determined by the Department of Commerce. The importer is also required to pay, or agree to pay on demand, the amount of any final assessed antidumping duty imposed under an antidumping order.

The Committee bill provides that, in certain circumstances, the U.S. purchaser shall be treated as the importer of record solely liable for the payment of antidumping duties imposed. If the Commerce Department determines that the merchandise is imported into the United States by, or for the account of, a manufacturer, producer, seller or exporter for the purpose of absorbing antidumping duties, the Commerce Department shall declare the importation a sham transaction and direct customs officers to treat the U.S. purchaser as the importer. Factors to be considered by Commerce in determining whether a transaction is a sham shall include whether:

(1) the manufacturer, producer, seller or exporter had actual notice of an actual antidumping proceeding;

(2) the transaction is an unusual method of importation by, or for the account of, such manufacturer, producer, seller, or exporter; and,

(3) the size and nature of the exporter's commercial operations with respect to the merchandise in the United States is insignificant.

The Committee provision would be applicable to antidumping duty orders issued as a result of investigations initiated after enactment of this Act.

The purpose of the Committee provision is to ensure that antidumping duties provide a remedy to the unfair trade practice they address. By imposing antidumping duties equal to the amount by which the foreign market value exceeds the U.S. price of merchandise subject to an antidumping duty order, current law provides a remedy to a U.S. industry that is materially injured by reason of sales at less than fair value. This assumes either that the imposition of antidumping duties will offset the amount by which sales are below fair value or that the foreign exporter will stop selling such merchandise below fair value.

The Committee believes that the purpose of the antidumping duty law is frustrated if the foreign manufacturer, producer, seller or exporter chooses to absorb any antidumping duties imposed. For example, in a recent case, a foreign producer of offshore drilling platforms indicated that it would set up a U.S. subsidiary to be the importer of record for its platforms, and to pay any antidumping duties assessed against such producer, so that a U.S. customer would not have its costs increased because of such duties.

Current law addresses this issue only in part. Under Department of Commerce practice, antidumping duties paid, or refunded to the importer, by the manufacturer, producer, seller or exporter of merchandise subject to an antidumping duty order are deducted from the U.S. price of such merchandise. The effect of this practice is to increase the difference between the foreign market value and U.S. price by the amount of antidumping duties absorbed, and thereby increase any antidumping duties finally assessed. While this solution to the absorption problem should eventually achieve the intended result, the injury caused by sales below fair value is not remedied until the foreign manufacturer, producer, seller, or exporter stops absorbing the antidumping duties.

The Committee is concerned that some foreign manufacturers or exporters purposefully absorb antidumping duties to achieve sales, increase U.S. market share, and maintain employment. Such objectives may be sufficiently important to the foreign entity that it is willing to bear the costs associated with such absorption. In those cases in which the Commerce Department determines that a foreign manufacturer, producer, seller, or exporter is absorbing the antidumping duties, the U.S. purchaser of the merchandise, rather than the importer of record, shall be liable for the payment of such duties.

The Committee bill defines three factors that the Commerce Department should take into account in determining whether a transaction is a sham. The Committee does not intend these factors to be interpreted in an overly broad manner. The purpose of the Committee provision is to require the U.S. purchaser to pay antidumping duties only when there is a clear indication that a foreign manufacturer or exporter is knowingly taking steps to allow it to absorb antidumping duties, rather than increase its price to the United States purchaser of the merchandise. The Committee does not anticipate that constructive knowledge of a potential antidumping proceeding would be sufficient to result in the application of this provision.

ACTIONS TO PREVENT CIRCUMVENTION AND DIVERSION

(Section 323)

The Committee is concerned about efforts to evade U.S. trade laws, particularly the antidumping and countervailing duty laws. Efforts to circumvent antidumping or countervailing duties through processing operations in the United States or third countries frustrate the intent of these laws, which is to offset unfair foreign trade practices. In particular, the Committee is concerned about the dumping or subsidizing of inputs that are incorporated into, or used in the manufacture or production of, downstream products. In addition, the Committee is aware that the effectiveness of the bilateral arrangements between the United States and steel-exporting countries to limit steel imports into the United States is being impaired by transshipment and circumvention schemes through third countries.

Section 323 of the Committee bill establishes a program intended to deal with these problems. New sections are added to current law to establish a selective monitoring program of imports of downstream products that incorporate dumped or subsidized inputs and to allow the Department of Commerce to expand the scope of antidumping and countervailing duty orders to prevent circumvention and diversion. Section 323 also includes a provision to strengthen the President's authority to enforce the bilateral arrangements with steel-exporting countries. To improve international discipline over diversion, the Committee has also included among the principal negotiating objectives for multilateral trade agreements the revision of GATT articles necessary to define and discipline adverse trade effects resulting from the dumping of inputs.

Downstream Product Monitoring

There is no provision in current law for monitoring imports of products that may include dumped or subsidized inputs. The Committee bill adds a new section 780(a) to Title VII of the Tariff Act of 1930 which requires monitoring of imports of certain downstream products that incorporate component parts that have been found to be dumped or subsidized.

Under the Committee bill, a domestic producer of a component part or downstream product may petition the Commerce Department to designate a downstream product for monitoring. The petition must specify the downstream product, the component part incorporated into such downstream product, and the reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

Downstream products that may be considered for monitoring include any manufactured product into which a component part is incorporated. A component part is defined as any imported article which:

(1) during the previous five years, has been subject to an antidumping or countervailing duty order or suspension agreement with respect to which a dumping margin or net subsidy of 15 percent or more was estimated; and,

(2) due to its inherent characteristics, is routinely used as a major part, material, component, assembly or subassembly in a downstream product.

The Commerce Department must review all petitions for designation, and determine within 14 days whether:

(1) there is a reasonable likelihood that U.S. imports of the downstream product will increase as an indirect result of any diversion with respect to the component part; and,

(2)(a) the component part is already subject to monitoring to aid in the enforcement of the bilateral arrangements on steel imports;

(b) a significant number of antidumping or countervailing duty orders, or agreements suspending investigations, have been issued against merchandise that is related to, and manufactured in the same foreign country as, the component part; or,

(c) at least two antidumping or countervailing duty orders, or agreements suspending investigations, have been issued against merchandise similar in description and use, and manufactured or exported by the same company as, the component part.

In making this determination, the Commerce Department may consider, if appropriate, such factors as:

(1) the value of the component part in relation to the value of the downstream product;

(2) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and,

(3) the relationship between foreign producers of the component product and foreign producers of the downstream product.

The Commerce Department shall publish in the Federal Register notice of its determinations regarding petitions, and if its determination is affirmative, shall transmit to the ITC a copy of its determination and the petition. Any determination made by Commerce regarding the designation of a downstream product shall not be subject to judicial review.

Immediately upon receiving an affirmative determination from the Commerce Department regarding a petition under this subsection, the ITC must begin monitoring trade in the downstream product. If the ITC finds that imports of the downstream product increase during any calendar quarter by more than five percent over the preceding quarter, it shall analyze the increase in the context of overall economic conditions in that product sector. The ITC is required to make quarterly reports to the Commerce Department on such monitoring and analyses.

The Commerce Department shall review the ITC monitoring reports and consider such information in determining whether to initiate an antidumping or countervailing duty investigation regarding imports of the downstream product. If the information gathered by the ITC indicates that U.S. imports of the downstream product are not increasing and there is no reasonable likelihood of diversion with respect to component parts, the Commerce Department shall request the ITC to cease monitoring any downstream product.

This provision is designed to complement current law and the other elements of the bill's program to address circumvention and diversion. Current law allows antidumping duties to be imposed to offset input dumping when the foreign producer of a downstream product and the foreign producer of a component part are related. Current law also provides for the imposition of countervailing duties to offset upstream subsidies if the final product is produced in the same country as the input. In addition, section 323(b) of the Committee bill allows the Commerce Department to expand an antidumping or countervailing duty order to prevent circumvention and diversion. The monitoring program will first assist in developing information which may lead directly to the initiation of an antidumping or countervailing duty investigation. The monitoring program will also help to develop information on the impact of dumped or subsidized inputs on trade in the downstream product for the purpose of international negotiations. Finally, monitoring should discourage input dumping by putting foreign exporters and U.S. importers on notice that the Commerce Department is developing information that may lead to the initiation of an investigation.

While the provision grants substantial discretion to the Commerce Department to decide when to designate a product for monitoring, the Committee expects the Commerce Department to approve such designations when there is a reasonable likelihood of diversion occurring and when any one of three selectivity provisions described in the bill apply (the component part is subject to monitoring under the steel import program, there have been a significant number of orders or suspension agreements against related components manufactured in the same foreign country covered by the order, or there have been at least two orders or suspension agreements issued against items similar to the component part that are manufactured or exported by the same foreign entity). The Committee believes that, when the steel import program is being circumvented through input dumping, or when there is evidence of repeated dumping or subsidization, Commerce should designate downstream products for monitoring if there is a reasonable likelihood of diversion occurring and conduct an active program to combat such diversion.

The ultimate purpose of the monitoring program is to provide an early warning signal of actual diversionary practices. The Committee expects the Commerce Department to consider the information gathered by the ITC and institute appropriate investigations.

Prevention of Diversion and Circumvention of Antidumping and Countervailing Duty Orders

The Committee bill adds a new section 780(b) to the Tariff Act of 1930 to clarify the scope of an antidumping or countervailing duty order. The purpose of the provision is to prevent certain forms of circumvention and diversion that are being practiced by foreign producers to avoid antidumping and countervailing duties.

The bill adds a new section 780(b)(1) to the 1930 Act to address circumvention of orders through processing operations in the United States. This section allows the Commerce Department to include within the scope of an order imported parts or components used in the completion or assembly of merchandise sold in the United States if:

(1) the merchandise sold in the United States is of the same class or kind as a product that is the subject of an order;

(2) the merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the same foreign country to which such order applies; and,

(3) the difference between the value of the merchandise sold in the United States and the value of the imported parts and components is small.

In determining whether to include parts or components in the order, the Commerce Department shall consider the pattern of trade, whether the foreign manufacturer of the parts and components is related to the party performing the completion or assembly in the United States, and whether U.S. imports of the parts or components increased subsequent to the issuance of the order.

The bill also adds a new section 780(b)(2) to the 1930 Act to address circumvention of orders through processing operations in third countries. This section allows the Commerce Department to include within the scope of an order merchandise imported into the United States that is assembled or completed in a third country if:

(1) such imported merchandise is of the same general class or kind as a product that is the subject of an order;

(2) such imported merchandise is completed or assembled from goods produced in the same foreign country to which such order applies; and,

(3) the difference between the value of such imported merchandise and the value of the goods from the country subject to the order that are incorporated into such imported merchandise is small.

In determining whether to include such imported merchandise in the order, the Commerce Department shall consider the pattern of trade, whether the foreign manufacturer of the goods from the country subject to the order is related to the party performing the completion or assembly in the third country, and whether imports of the goods into the third country increased subsequent to the issuance of the order.

The Committee intends this provision to apply in two situations:

(1) when the order issued applies to parts or components which are then sent to a third country to be made into a final product (diversion); and,

(2) when the order issued applies to a product, parts or components of which are then sent to a third country for assembly or completion, in which case the third country is being used to circumvent the order on the final product.

The first situation is typical of the kind of diversionary input dumping that the downstream product monitoring provision in the Committee bill aims to identify.

New sections 780(b)(1) and 780(b)(2) of the 1930 Act apply when the difference between the merchandise sold, or imported into, the United States and its parts or components is small. The Committee has not attempted to develop a precise meaning for the term "small" as used in these sections, principally in recognition that different cases present different factual situations. The Committee does not, however, intend that the term "small" be interpreted as insignificant. While these subsections grant the Commerce Department substantial discretion in interpreting these terms, and invoking these measures, so as to allow it the flexibility to apply the provisions in an appropriate manner, the Committee expects the Commerce Department to use this authority to the fullest extent possible to combat diversion and circumvention of the antidumping and countervailing duty laws.

The bill adds a new section 780(b)(3) to prevent foreign producers from making minor alterations to merchandise subject to an order or investigation in order to evade such order or investigation. The provision creates a presumption that an investigation or order covers articles altered in form or appearance in minor respects, whether or not such articles are included in the same tariff classification. If the Commerce Department determines it unnecessary to consider the altered merchandise within the scope of the investigation or order, this presumption would not apply.

In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall characteristics of the merchandise, the expectations of ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported product.

An important purpose of this provision is to avoid results such as the one reached by the Commerce Department in a case involving portable electric typewriters from Japan, where a minor alteration resulted in portable typewriters with calculator or memory features being excluded from the scope of an existing antidumping order on portable typewriters. The Committee intends this provision to prevent foreign producers from circumventing existing findings or orders through the sale of later developed products or of products with minor alterations that contain features or technologies not in use in the class or kind of merchandise imported into the United States at the time of the original investigation. Such later developments or minor alterations would not result in the exemption of the imported merchandise from the finding or order, unless the Commerce Department finds it unnecessary to include such products in the finding or order.

The purpose of new section 780(b) of the 1930 Act is to authorize the Commerce Department to apply antidumping and countervailing duty orders in such a way as to prevent circumvention and diversion of U.S. law. The Committee is concerned about the increasing instances in numerous product sectors of circumvention, diversion, and evasion of antidumping and countervailing duty orders. Under current law, parties subject to these orders have been able to evade the order by making slight changes in their method of production or shipment of merchandise destined for consumption in the United States. As a result, the existence of these "loopholes" has seriously undermined the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings, and frustrated the purposes for which these laws were enacted. The Committee believes that aggressive implementation of this section by the Commerce Department can foreclose these practices.

Steel Imports

In 1984 and 1985 the United States negotiated a series of bilateral arrangements with steel-exporting countries. Presently, the United States has bilateral arrangements with 18 countries and the European Community. The President is authorized to enforce these quantitative restrictions on steel imports under title VIII of the Trade and Tariff Act of 1984 (the Steel Import Stabilization Act), as determined in bilateral arrangements with steel-exporting countries.

The Steel Import Stabilization Act, as passed originally, does not provide for explicit authority to enforce quantitative restrictions and other terms of the bilateral arrangements with respect to steel imports when a steel product is exported from an arrangement country and transformed in a nonarrangement country prior to entry in the United States. Section 323(b) of the Committee bill adds a new subsection to section 805 of the 1984 Act to provide clear authority for the Administration to treat any steel product that is manufactured in a country that is not party to a bilateral arrangement (a "nonarrangement country") from steel which was melted and poured in a country that is party to a bilateral arrangement (an "arrangement country") as if it were the product of the arrangement country for the purposes of the quantitative restrictions and other terms under that arrangement.

Under this additional section, if an arrangement country ships, for example, a structural shape to a nonarrangement country, and the nonarrangement country finishes the product into a fabricated structural for buildings in the United States, then the fabricated structural from the nonarrangement country may be treated as if it were a fabricated structural from the arrangement country for the purposes of quota and export license/visa/certificate restrictions.

The President may direct the Secretary of the Treasury to implement such procedures as necessary to carry out the purpose of this subsection.

The Committee intends that the Administration use the additional authority provided under this section to prevent or respond to attempts to circumvent the negotiated agreements on steel. The Committee also intends for this authority to be used to enforce restrictions on steel exports from countries with whom the United States has negotiated a bilateral steel arrangement and whose steel trade is now embargoed or prohibited, where circumvention is evident. In determining whether circumvention is occuring, the Administration should examine the pattern of trade, in particular any changes or marked increases in trade since the implementation of the Steel Import Stabilization Act.

The Committee is increasingly concerned about reports that certain parties are involved in transshipment and circumvention of the President's steel program through third country markets. The increased imports and import penetration from non-arrangement countries is a direct result of the shipment of steel from arrangement countries to non-arrangement countries for further processing. Recent reports in international journals, moreover, indicate that certain countries are importing large quantities of South African steel for further processing and export to the United States, in direct contravention of the present embargo on South African steel.

These attempts at circumvention ignore the intent of the President's steel program and the Steel Import Stabilization Act. The Committee believes that full and vigorous enforcement of the bilateral arrangements is necessary to eliminate the effects of the unfair trade practices in steel imports, and the Committee intends that the President use the additional authority granted by this section for these purposes.

MONITORING OF MULTIPLE DUMPING OFFENDERS

(Section 324)

Current law makes no distinction between parties who are subject to one antidumping duty order and parties who are subject to multiple antidumping duty orders. Section 732(a)(2) of the Tariff Act of 1930 provides authority for the Department of Commerce to establish a monitoring program with respect to imports of the same class or kind of merchandise from additional supplier countries if there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping. This provision involves monitoring imports of the same product from different countries, however, and does not focus on persistent dumping by the same party with respect to different products.

Section 324 of the Committee bill adds a new section 740 to the 1930 Act to establish procedures for monitoring imports within a specific product category when a foreign manufacturer is repeatedly found to be dumping related products in the United States.

Under section 324, an eligible domestic entity may petition the Commerce Department to establish a product monitoring category with respect to merchandise at any time after such merchandise becomes subject to an affirmative dumping determination. The petition must identify the merchandise subject to the affirmative dumping determination, specify the merchandise that the petitioner seeks to have included in the product monitoring category (and any merchandise that the petitioner particularly seeks to have excluded from the category), identify the tariff designations of such merchandise, and explain why merchandise should be included or excluded.

Upon receiving a petition, the Commerce Department shall promptly verify the affirmative dumping determination upon which the petition is based and, upon verification, transmit the petition to the ITC. Upon receipt of the petition, the ITC shall determine whether the petitioner is an eligible domestic entity and, if so, proceed to establish a product monitoring category with respect to the merchandise subject to the affirmative dumping determination. The Committee expects the Commerce Department to process such petitions as expeditiously as possible so that the ITC is not delayed in beginning the process of establishing the product monitoring category. Within 90 days of the filing of the petition, the ITC must determine the scope of the product monitoring category after publishing notice that a petition has been received and providing opportunity for public comment, including a public hearing if requested by any interested party. The ITC may also, on its own initiative, modify the scope of a product monitoring category after publishing notice of the proposed modification, and providing an opportunity for interested parties to present their views.

Under section 324 of the bill, the term "eligible domestic entity" is defined as a manufacturer or producer in the United States, or a certified or recognized union or group of workers representative of an industry in the United States, that manufactures or produces merchandise that is like the merchandise subject to an affirmative dumping determination or is similar enough to such merchandise to be considered for inclusion in the same product monitoring category including such merchandise. The term "affirmative dumping deterimination" as it applies under this section means:

(1) an affirmative final antidumping determination by the Commerce Department that results in an antidumping order requiring the deposit of estimated antidumping duties of at least ten percent ad valorem; or,

(2) any affirmative preliminary antidumping determination by the Commerce Department including a determination of dumping margins of at least ten percent ad valorem that does not result in a final determination because the investigation is suspended under section 734 of the Tariff Act of 1930.

For purposes of this section, all antidumping orders issued after December 31, 1980 (and all preliminary determinations made after December 31, 1984 that resulted in suspension agreements) and before the date of enactment of this bill with respect to merchandise of the same foreign manufacturer shall be treated as one affirmative dumping determination.

In establishing appropriate product monitoring categories, the ITC shall ensure that each such category consists of similar merchandise which is produced by similar processes under similar circumstances and has similar uses. The Committee intends the ITC to identify product monitoring categories that include a range of products that are closely related, but broader than those that would normally be found to be like each other. For example, semiconductors would be considered a product category.

The definition by the ITC of a product monitoring category does not, in and of itself, initiate a monitoring program. Under the bill, if a foreign manufacturer has been the subject of two affirmative dumping determinations on merchandise within one product category during the preceding ten-year period, the Commerce Department shall establish a monitoring program on any merchandise within such product category if an eligible domestic entity submits a petition to the Commerce Department requesting monitoring of such merchandise and the Commerce Department finds that there is a reasonable likelihood that sales of such merchandise may be occurring in the United States at less than fair value.

If a manufacturer has been the subject of three affirmative dumping determinations on merchandise within one product category during the preceding ten-year period, Commerce must monitor all merchandise of such manufacturer within the applicable product category. For purposes of this section, a foreign manuacturer is considered to be subject to an affirmative dumping determination if a dumping margin is specifically assigned to such manufacturer in either an antidumping order or in a preliminary determination prior to the suspension of an antidumping investigation.

Under the provisions of this section, any monitoring program established on merchandise shall continue for three years, after which time such monitoring will terminate. This provision does not prevent or preclude the establishment of a subsequent monitoring program of the merchandise previously monitored if the elements for such monitoring exist.

The Committee expects that, in monitoring merchandise under this section, the Commerce Department would gather, to the extent practicable, information on imports, prices, and costs as may be appropriate. If information obtained as a result of the monitoring indicates a reasonable likelihood that sales at less than fair value may be occurring, the Commerce Department shall initiate an expedited investigation under section 732(a) of the 1930 Act into the question of whether the elements necessary for the imposition of an antidumping duty exist, unless the domestic industry (as defined under section 771(4) of the 1930 Act) requests that no such investigation be initiated. No extensions of the normal time deadlines in the investigation may apply unless all domestic parties to the investigation submit written notice to the Commerce Department of their consent to such application.

The purpose of the Committee provision is to stop repeated dumping by foreign manufacturers, the effect of which is to cause serious harm to identifiable industrial sectors in the United States. A number of important U.S. industries, including semiconductors, steel and electronics, have been seriusly injured by a pattern of recurrent dumping. Foreign companies intent on gaining a larger share of the American market have repeatedly dumped related products into the United States in apparent disregard of U.S. antidumping laws. The Committee believes that the antidumping laws must be made more effective in responding to repetitive dumping by foreign manufacturers.

By providing the Commerce Department with adequate information to determine whether a foreign manufacturer that has already proven to be a repetitive offender of the antidumping laws is again selling at less than fair value, the monitoring procedures established by this bill will result in expedited action to help domestic industries that have already demonstrated that they are being materially injured by other imports within the same product category (or when the foreign manufacturer has agreed to eliminate the injury or dumping). These provisions will also act as a deterrent against recurrent dumping practices by foreign manufacturers. It is the Committee's intention that the Commerce Department conduct an active program to eliminate such patterns of repeated dumping by foreign manufacturers.

DUMPING BY NONMARKET ECONOMY COUNTRIES

(Section 325)

To determine whether merchandise from a country with a state-controlled economy is being sold at less than fair value in the United States, current law directs the Department of Commerce to use a "surrogate country" methodology to establish an appropriate foreign market value for the imports from the state-controlled economy country. Under section 773(c) of the Tariff Act of 1930, if available information indicates to the Commerce Department that the economy of the exporting country is state-controlled to an extent that sales in that country do not permit the Commerce Department to determine foreign market value through the normal methodology, the Commerce Department determines the foreign market value of merchandise subject to investigation on the basis of normal costs, expenses, and profits as reflected by either:

(1) the prices at which merchandise of a non-state-controlled economy country is sold either for consumption in the home market of that country, or to other countries (including the United States); or

(2) the constructed value of merchandise in a non-state-controlled country.

Constructed value is defined by statute as the costs of production, an amount for general expenses and profit, and the costs of packaging for export.

The Committee bill amends section 773(b) to establish a new methodology for determining the foreign market value of merchandise exported from a "nonmarket economy" that is the subject of an antidumping investigation. If the merchandise under investigation is from a nonmarket economy country and the Commerce Department finds that the foreign market value of such merchandise cannot be accurately determined under the normal methodology, the bill requires the Commerce Department to determine the foreign market value on the basis of the trade-weighted average price at which comparable merchandise, produced in the eligible market economy country accounting for the largest volume of U.S. imports of such merchandise (hereinafter referred to as the "benchmark country"), is sold at arms length in the United States. If the Commerce Department determines that there is no eligible market economy country, the foreign market value of the merchandise under investigation shall be the constructed value of comparable merchandise in any market economy country.

Because the Commerce Department may have difficulties in getting detailed data from countries not subject to investigation, the bill gives the Commerce Department authority to use "comparable merchandise" as the basis for foreign market value. Comparable merchandise is a broader category than the "such or similar" merchandise comparison which is usually used in antidumping investigations. However, in applying this standard, the Commerce Department should make appropriate adjustments to compensate for quality differences in the merchandise under investigation and the comparable merchandise from the benchmark country. The purpose of making such adjustments is to ensure that the foreign market value assigned to the merchandise under investigation fairly reflects any differential due to inferior or superior quality. The Committee is particularly concerned that imports from certain nonmarket economy countries, such as the Peoples Republic of China, not be unfairly disadvantaged by use of the new methodology where price differences can be accounted for in whole or in part by quality differences in the imported merchandise. The Commerce Department should ensure that, in computing the trade-weighted average price, it only uses prices that are in fact from arms-length sales to unrelated parties.

The bill provides for the foreign market value to be determined using a factors of production methodology if the goods from the benchmark country are being sold at less than fair value. If the Commerce Department determines that the comparable merchandise produced in the benchmark country is subject to an antidumping duty order, or if the Commerce Department has reason to believe that sales of such merchandise are being made at less than fair value, the foreign market value of the merchandise subject to investigation shall be determined from the factors of production incurred in producing the merchandise, plus an amount for general expenses, profit and the cost of packaging for export as required by section 773(e) of the 1930 Act. Such factors of production include, but are not limited to, the hours of labor required, quantities of raw material employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation, and shall be valued from the best available evidence in a market economy or economies considered appropriate by the Commerce Department. The Commerce Department must determine whether there is a reason to believe that the comparable merchandise from the benchmark country is being sold at less than fair value if the petitioner or an interested party makes such an allegation.

It is inappropriate to use prices from the benchmark country to determine the foreign market value of the merchandise under investigation if such prices are at less than fair value. In such cases, a factors of production methodology provides the next best measure of fair value, particularly since that method reflects the actual production efficiencies and experience of the nonmarket economy producer that is under investigation. In order to avoid last minute determinations of methodology, the administering authority may require factors of production data in its initial questionnaire to producers in the nonmarket economy country.

It is important that the Commerce Department seek to make final decisions on the benchmark country by the time of its preliminary determination. Under existing practice, surrogate countries are frequently selected only very late in the proceeding, with the result that the final determination is adopted without meaningful comment. In investigations where this occurs, the parties are denied the opportunity to participate meaningfully in the administrative process.

The alternative factors of production methodology provided for in investigations where prices for the benchmark country are below fair value is particularly important to investigations involving commodities or fungible products. Such products are normally sold primarily on the basis of price and where the foreign country accounting for the largest volume of imports is selling at a dumped price, then the prices charged by all other importers will be, of necessity, affected by such prices.

Under the bill, the term "nonmarket economy country" means any foreign country that the Commerce Department determines does not operate on market principles of cost or pricing structures, so that sales in the country do not reflect the fair value of the merchandise. In making this determination, the Commerce Department shall take into account:

(1) currency convertibility;

(2) the extent to which wage rates are determined by free bargaining between labor and management;

(3) the extent to which joint ventures and foreign investment are permitted in the foreign country; and,

(4) such other factors as the Commerce Department considers appropriate.

The Commerce Department may make such a determination at any time. It shall remain in effect until revoked and not be subject to judicial review.

The bill defines the term "eligible market economy country" as any country that is not a nonmarket economy country, where comparable merchandise is produced and exported to the United States, and which the Commerce Department determines is appropriate, taking into account factors including (but not limited to):

(1) whether comparable merchandise from that country is subject to an antidumping or countervailing duty order (or agreement suspending any antidumping or countervailing duty investigation);

(2) whether any international agreement affecting the price or quantity of imports is in effect; and,

(3) whether the level of imports is small.

Upon request from the Commerce Department, the Customs Service and the ITC are required to provide it with all public and proprietary information submitted to, or obtained by, such agencies that are relevant to the proceedings.

Under section 734 of the 1930 Act, antidumping investigations may be suspended upon agreement by the foreign exporters to cease exports to the United States or to revise their prices to eliminate sales at less than fair value or the injurious effect of their exports. The bill adds a special rule for nonmarket economy countries to give the Commerce Department authority to suspend antidumping investigations with respect to nonmarket economy countries on the basis of quantitative restraint agreements. The Commerce Department may suspend an investigation based on such an agreement only if the agreement will prevent the suppression or undercutting of domestic price levels caused by the imports under investigation and if the agreement satisfies the requirements in current law that suspension agreements be in the public interest and that effective monitoring be practicable.

The current antidumping duty law and procedures as they apply to nonmarket economies do not work well. The Commerce Department is frequently unable to find surrogate producers willing to cooperate in investigations by providing data. Therefore, it has had to develop fall-back methodologies. The dumping margins for a nonmarket economy country will vary widely depending on which methodology or surrogate country is used. As a result, a nonmarket economy country typically is unable to predict whether or not a particular U.S. price will be considered a dumped price, and is unable to structure its activities accordingly. In addition, an American industry faced with low-priced competition from a nonmarket economy producer is unable to determine whether the antidumping duty law would provide a remedy. The Committee is changing the law to overcome this reliance on information that is extremely difficult to obtain, and to provide greater certainty and predictability in the administration of the antidumping duty law as it applies to nonmarket economy countries.

The Committee bill does not prohibit the Commerce Department from using its normal methodology for determining foreign market value in cases regarding nonmarket economy countries. If information submitted by a nonmarket economy country to the Commerce Department permits foreign market value to be determined accurately using the normal methodology, then the Committee expects such methodology to be used by the Commerce Department.

PROCESSED AGRICULTURAL PRODUCTS

(Section 326)

Under section 771(4) of the Tariff Act of 1930, the "industry" which the International Trade Commission is to examine to determine whether there is material injury to a domestic industry is defined as the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. Under section 771(10), the term "like product" means a product which is like or, in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.

Under section 771(9), an "interested party" who has standing to file an antidumping or countervailing duty petition on behalf of an industry includes:

(a) a manufacturer, producer, or wholesaler in the United States of a like product;

(b) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product;

(c) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States; and

(d) an association, a majority of whose members is composed of interested parties described above.

Section 326 of the Committee bill makes certain amendments to the definition of "industry" to allow growers or producers of a raw agricultural product in appropriate cases to be considered part of the domestic industry, and to have standing along with processors to bring antidumping and countervailing duty cases involving imports of processed agricultural products.

Section 326 adds a new section 771(4)(E) to the definition of "industry" to provide that in countervailing duty and antidumping investigations involving agricultural products processed from raw agricultural products, the growers or producers of the raw agricultural product may be considered part of the industry producing the processed product if two tests are met: (1) the processed agricultural product must be produced from the raw agricultural product through a single continuous line of production, and (2) there is a substantial coincidence of economic interest between producers of the raw and of the processed agricultural products.

Processed agricultural products are considered to be processed from raw agricultural products through a single continuous line of production if: (1) the raw agricultural product is substantially or completely devoted to the production of the processed product, and (2) the processed agricultural product is produced substantially or completely from the raw product. The Committee does not expect this test to be met if the raw product is devoted to production of several different processed products, or if the processed product is produced from several different raw products.

The intent of this provision is to codify Commission practice in prior cases in which a "single continuous line of production" was found to exist, including *Orange Juice, Lamb Meat,* and *Raspberries.* The term "substantially or completely devoted" does not necessarily imply a fixed percentage, but should be interpreted consistently with these prior Commission determinations and the circumstances of the individual investigations. The Committee notes, for example, that with regard to a product such as grapes, certain varieties have multiple uses, others are wine variety grapes used almost entirely in the production of wine, and still others have a predominant use but are put to additional uses as well. Particularly in the third instance, the Commission must exercise its discretion, applying all the necessary factors (including the "substantial coincidence of economic interest" criterion), before reaching its conclusions as to the scope of the industry.

The determination as to whether there is substantial coincidence of economic interest between producers of the raw and processed agricultural products is to be based upon relevant economic factors demonstrating economic relationships between the two groups of producers.

Section 326 also amends the definition of "interested party" under section 771(9) of the Tariff Act of 1930 to provide that growers or producers of a raw agricultural product who were determined to be part of the industry pursuant to the new section 771(4)(E), in combination with processors, would have standing to bring countervailing duty and antidumping investigations involving the processed product. A coalition or trade association which is representative of either (a) processors or (b) both processors and growers or producers would be considered an interested party and thus have standing to file petitions for investigations relating to processed agricultural products.

Finally, this section amends 771(7) of the Tariff Act of 1930 by adding an additional factor to be considered by the Commission in determining the existence of threat of material injury. In any countervailing or antidumping investigation involving imports of both a raw and processed agricultural product, the Commission would be required to consider the likelihood of product-shifting due to an affirmative determination with respect to the raw or the processed product (but not both). It should be noted that this amendment is not necessarily restricted to raw and processed agricultural products whose producers are determined to be part of the same industry pursuant to the new section 771(4)(E).

The amendments contained in section 326 of the bill directly relate to the inquiry made by the ITC under Title VII of whether agricultural industries are being materially injured by dumped or subsidized imports. Many of the concepts embodied in these amendments have been derived from ITC practice in past cases involving agricultural products. The purpose of including them in the statute is to give explicit congressional endorsement of their consideration, and to encourage their application.

In defining the scope of the domestic industry, the ITC may consider whether the growers or producers of a raw agricultural product as well as the processors of the finished product operate as a single industry producing the processed "like" product. In past cases, the Commission has examined the degree of vertical integration in the industry, as manifested by common ownership between packers and processors, and the existence of contractual relationships between prices of the raw and processed agricultural commodities. It is the Committee's intent that the ITC continue to view these factors as possible evidence of coincidence of *economic* interests. The inquiry should focus, however, on relevant economic relationships, and not necessarily legal relationships.

The Commission may examine a variety of economic factors in making its determination as to the scope of the industry. The Commission shall base its determination on the facts and circumstances of each case, and apply this section in a manner that is consistent with commercial realities in relevant industries. The Committee emphasizes that the criteria in this section establish a flexible standard, and no one factor necessarily is determinative.

In those cases where the ITC determines that price is a factor to be considered, the Commission is directed to examine the degree of correlation between prices of the raw and of the processed agricultural commodities. Such price relationship could be based upon market factors as well as contractual relationships. In addition, there are commodities for which the processor adds very little value to the raw product in the processing operation. In such cases, the ITC would consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product as evidence of coincidence of economic interest.

The breadth of the definition of domestic industry obviously has significant implications for determining whether there is material injury or a threat of material injury to the domestic industry. In cases in which the domestic industry includes both growers or producers and processors under the new section 771(4)(E), injury to the growers or producers of the raw agricultural product as a result of imports of the processed agricultural product is relevant in determining injury to the domestic industry. Also relevant in such cases is the relative importance, on the basis of value-added, of the growers or producers and of the processors within the industry producing such product. In making its injury determination, the ITC may give greater weight to one or the other group within the industry, in proportion to their relative importance, if either group accounts for a significant portion of the total value of the processed product.

ACCESS TO INFORMATION

(Section 327)

This section provides that the ITC shall, upon an appropriate request, make business confidential information submitted to the ITC during an antidumping or countervailing duty investigation available under administrative protective order. The ITC would have considerable discretion in determining how to frame and administer these protective orders, so long as disclosure of all information occurs in an expeditious manner, so long as the terms and conditions of such protective orders are reasonably calculated to accomplish legitimate purposes and so long as such terms and conditions are not onerous or overly burdensome so as to defeat the intent and purpose of this section.

The principal change from current law is that the provisions of section 777(c)(1)(A) of the Tariff Act of 1930, which permits the administering authority and the ITC to issue protective orders, are made mandatory for the ITC and require the ITC to release all confidential information under protective order (subject to limited exceptions discussed below). Under current law, the ITC has discretion whether to provide the representative of a party access to confidential information submitted by another party to the investigation under protective order. Under section 777(c)(2) of the 1930 Act, a petition may be made to the U.S. Court of International Trade to require the ITC to release information only in the case of confidential information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product. The ITC's practice has been to give access under protective order only to the two kinds of information that the court is authorized to order it to release.

The Committee is concerned that the ITC's practice creates difficulties for parties to ITC investigations. In most investigations, the bulk of the information collected by the ITC and on which it bases its decisions consists of confidential business information submitted by domestic producers, importers, and purchasers of the allegedly dumped or subsidized articles under investigation. Only aggregate data that cannot reveal the proprietary information of individual companies are released to the parties and the public. Because the ITC does not allow representatives of the parties access to the more detailed information in the record, they typically lack the very data that are essential for them to present their cases effectively. Moreover, on occasion the ITC commits an error in the presentation or interpretation of the data that counsel for the parties could bring to the ITC's attention before it makes a determination on the merits of the case if counsel were allowed to review the data. The ITC's practice of not releasing information under protective order is particularly curious in light of the fact that, in appeals of ITC determinations, the Court of International Trade, with rare exceptions, ordinarily releases the same information to counsel for the parties, usually with the ITC's consent. The Committee believes that the administrative process would be greatly improved if parties to an investigation who request protective order access be given it in a timely manner that enables them to use the information effectively.

The amendment requires the ITC to give representatives of the parties access to confidential information submitted by any person in connection with an investigation. Under existing section 777(b)(1), confidential information can also be made available to employees of the administering authority and the ITC who are directly concerned in carrying out the investigation or a Customs Service employee who is conducting an investigation regarding fraud.

The Committee recognizes that, in adopting this provision, it is providing different administrative protective order requirements for the ITC, which must provide access to all business confidential information, and the Department of Commerce, which may limit protective order access solely to information supplied by the parties to an investigation. This distinction is based on the practical reality that in an antidumping or countervailing duty investigation the significant information obtained by the Commerce Department generally comes from parties to the investigation, primarily the foreign respondents. On the other hand, in an injury investigation conducted by the ITC pertinent information is derived from a variety of sources, many of whom are not parties to the proceeding. This section, therefore, provides to the parties before either agency full access to all meaningful information that will assist in their preparation of a case.

The Committee emphasizes that the scope of this section reaches only business proprietary information. Classified information, material subject to a legitimate claim of privilege, and confidential information submitted by a foreign government which is restricted from disclosure by statute or Executive order need not be released. In addition, the ITC can withhold from disclosure a trade secret, that is, a secret formula or process having a commercial value, not patented, known only to certain individuals who use it in compounding or manufacturing an article of trade. By using the term "trade secret," the Committee does not intend to denote the general privacy of ordinary commercial business information.

The persons to whom access to confidential information may be granted under protective order are counsel or other representatives of the parties who require access in order to assist in their preparation of the case. Information may also be made available to experts and support personnel who are under the advice and control of the attorney or other representative of a party and who have also signed an administrative protective order. In determining who may properly be given such access, the ITC should be guided by the factors enumerated in *United States Steel Corp.* v. *United States,* 730 F.2d 1465 (Fed. Cir. 1984). Information should only be made available if the ITC is satisfied that adequate sanctions for disclosure are available against the proposed recipient of the information.

Under sections 335 and 777f(c)(1)(B) of the Tariff Act of 1930, the ITC has broad authority to frame such regulations as are necessary to ensure maximum possible access to information without impeding the ITC's ability to complete its investigations within the tight time limits for investigation provided by statute. The Committee intends that the ITC will make confidential information obtained in the course of an investigation available on a regular and prompt basis. The Committee recognizes the burden imposed on the ITC by the strict investigatory deadlines, particularly in preliminary 45-day investigations, and understands that the ITC cannot distribute all information as soon as it is obtained. However, the Committee expects the ITC to adopt regulations and procedures to facilitate the provision of all eligible information to representatives of the parties on as timely a basis as practicable.

The provision deletes the portion of section 777(c)(2) of the 1930 Act restricting review by the U.S. Court of International Trade of ITC denials of requests for confidential information to situations involving such information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of a like product. Retention of this restriction would be inappropriate in light of the broader requirement to release information under protective order.

In adopting this section, the Committee has taken into account the ITC's legitimate concern that the availability under protective order of domestic firms' closely guarded financial information may have a "chilling effect" on the willingness of some firms to supply information voluntarily. The Committee notes, however, that the ITC possesses effective statutory authority to deal with the refusal of firms to provide information. First, the ITC is authorized to subpoena needed information and to seek district court enforcement of its subpoenas when necessary. The ITC has in the past been very successful in obtaining judicial enforcement of its subpoenas. *U.S. International Trade Commission* v. *E. & J. Gallo Winery,* 637 F. Supp. 1262 (D.D.C. 1985). The ITC is entitled to broad discretion in framing its requests for information relevant to the issue of material injury to a domestic industry, and the Committee believes the courts should act expeditiously on the ITC's petitions for subpoena enforcement.

Second, the ITC is entitled, under section 776(b), to utilize the best information otherwise available when any person refuses or is unable to provide information, including using information adverse to the interests of that person. *Atlantic Sugar, Ltd.* v. *United States,* 744 F.2d 1556 (Fed. Cir. 1984).

Finally, the best insurance that the ITC will be able to obtain the information it needs for its investigations is its reputation for strictly maintaining the confidentiality of information submitted to it. The Committee endorses the ITC's protecting that reputation through the threat and, if necessary, use of strong sanctions under section 1677f(c)(1)(B) against any person found in violation of an administrative protective order, including disbarment or suspension from practice before the ITC, referral to the organized Bar for investigation of possible ethical violations, and withholding of confidential information from the party or its representative. The ITC's regulations should provide for all appropriate sanctions.

CERTIFICATION OF SUBMISSIONS IN COUNTERVAILING AND ANTIDUMPING PROCEEDINGS

(Section 328)

Section 328 amends title VII of the Tariff Act of 1930 to require any person submitting factual information to the Department of Commerce or the ITC in connection with an antidumping or countervailing duty investigation, on behalf of a petitioner or interested party, to certify that such information is accurate and complete to the best of that person's knowledge. For purposes of this section, "factual information" means any data or statements of fact filed with or presented to the administering authority or the Commission during an antidumping or countervailing duty proceeding. It includes information submitted in support of a petition, responses to questionnaires, and data or statements of fact in support of allegations.

There is no requirement under current law that persons submitting factual information certify the accuracy of such information. To the extent that the party providing the information may not necessarily be the same party who prepared the information or who will be directly affected by the outcome of the investigation, the incentive to provide accurate and complete submissions may be absent.

The purpose of this provision is to ensure that proceedings under title VII are not initiated based on frivolous allegations that are not supported by the facts alleged, or decided based on arguments that omit important facts known or reasonably available to the party making the submission of fact. The certification should state that the submitter, and the submitter's legal representative, if applicable, has read the submission and, to the best of their knowledge or belief, the information contained in the submission is complete and accurate.

MATERIAL INJURY

(Section 329)

Factors for the ITC To Consider

In determining whether a domestic industry is materially injured or threatened with material injury by reason of imports subject to investigation, the ITC is required under section 771(7)(B) of the Tariff Act of 1930 to consider, among other factors—

(i) the volume of imports,

(ii) the effect of imports on prices in the United States for like products, and

(iii) the impact of imports on domestic producers of like products.

Paragraph (C) of section 771(7) further identifies particular factors the ITC must consider in evaluating these three factors.

Section 329 makes certain changes to section 771(7) to clarify Congressional intent with respect to the ITC injury analysis. First, the amendment clarifies current law and Congressional intent that, in every case, the Commission is required to consider all three factors of volume, price, and impact.

The Committee notes that it does not intend overturning judicial precedent such as *British Steel Corp.* v. *United States,* 593 F. Supp. 405 (C.I.T. 1984), holding that the ITC need not necessarily respond to all arguments, regardless of their merits or relevance, made by the parties before it. Rather, Commissioners are required in every case specifically to address the three key factors covered by this section, and to identify and explain the relevance of other factors on which it has relied on a case-by-case basis.

Second, the provision amends section 771(C)(ii) to replace the term "price undercutting" with the term "price underselling" to clarify that no evidence of predatory pricing practices is required.

Third, section 771(C)(iii) is amended to clarify that the industry's condition should be determined in relation to that particular industry—not in relation to other industries or to manufacturers as a whole, which may be responding to different business cycles.

Fourth, the ITC is directed to examine, as part of its material injury analysis, existing efforts by the domestic industry to develop the technology necessary to produce a type of product derived or developed from an earlier type.

Finally, section 329 clarifies that, in assessing the impact of imports on domestic producers, the ITC only consider the domestic production facilities and operations of domestic producers. If a domestic producer also imports, the ITC should only consider those facilities and operations of that producer which are related to production of the like product. If a domestic producer also has offshore production facilities, those operations should not be considered part of the domestic industry for injury purposes.

The changes which the Committee has approved to section 717(7)(B)-(C) are generally clarifications of current law and of original Congressional intent with respect to current law. These changes are believed necessary because certain Commissioners may not be applying the law in accordance with Congressional intent. Often it is difficult to ascertain, from reading a particular Commissioner's opinion, whether the Commissioner in fact considered all factors required under the law, and based his or her decision on such factors.

The Committee, for example, is concerned that certain Commissioners may base a negative determination on simply one factor without even examining the others. A sound determination of material injury cannot be made unless there is a thorough analysis of the volume of imports, the price effects of those imports, and the impact which imports at that volume and at such prices are having on domestic producers.

The Committee is of the view that the determination of material injury must be made on a case-by-case basis, by applying the enumerated statutory factors in the particular circumstances of the industry under investigation. The Committee disapproves of determinations by individual Commissioners that rely upon the mechanical application of factors or formulas that remain constant from case to case, but are not enumerated in section 717(7). Any such determinations should be scrutinized with particular care by the Commission's reviewing courts for conformity with the intent of Congress as expressed in this amendment.

When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry. Sometimes, the existence of temporary cyclical trends can mask real harm being caused by unfairly traded imports. For example, capital intensive industries that are suffering severe dislocation from imports may stop investing in new plant and equipment because they cannot raise capital or the existence of low priced imports in the market makes investment unprofitable. Such industries may continue to have respectable operating profits from fully depreciated plant and equipment, thereby appearing on cursory examination not to be injured, although examination of such factors as capital expenditures would show they are becoming uncompetitive.

The second change in current law made by this section focuses in particular on the evaluation of the price effects of imports. The Committee intends to disapprove a narrow interpretation of the term "price undercutting" to refer only to *predatory pricing behavior* whereby a firm lowers its price to drive out competitors in order to gain market power. Some Commissioners have also stated that they do not find evidence of underselling as gathered by the Commission staff to be probative on the issue of causation of injury. The change of wording in the statute is intended to clarify that the dumping and countervailing duty laws are not intended to reach only instances of predatory pricing. A foreign producer may have no reasonable hope of obtaining market power, yet may cause material injury to a United States industry through below-market prices. The Committee also believes that not all price differences can be explained by differences in the merchandise. A foreign producer may sell merchandise that is commercially identical to U.S.-producer merchandise at prices that are significantly lower than the U.S.-produced merchandise. Nevertheless, it remains incumbent upon the Commission to make "apples to apples" comparisons in determining whether material injury has occurred. The Committee expects the Commission to use statistically relevant data whenever possible rather than focusing primarily on evidence of isolated sales.

The third change relates to the Committee's concern that, in examining the impact of imports on domestic producers, the ITC should not examine the health or condition of an industry in any abstract sense. An industry's health should be determined in the context of the impact that imports are having on that industry, both positive and negative. Furthermore, the condition of an industry should be considered in the context of the dynamics of that particular industry sector, not in relation to other industries or manufacturers as a whole. The Commission should consider the factors under section 771(7)(C)(iii) with regard to the normal business cycle for that industry and the normal conditions of competition for that product market.

Fourth, the ITC is directed to examine as part of its analysis of material injury to the domestic industry the effects of imports on the industry's existing efforts to develop the technology for production of a later generation of products related to the type of product under investigation. To compete successfully in R&D and investment intensive industries, U.S. producers can remain in the forefront of technical progress only through maintaining the ability to develop new product innovations and the next generation of a product. Dumped or subsidized foreign sales in the U.S. market may impede or threaten to impede the ability of U.S. producers to devote the necessary resources to important product innovations and next generation development because of the long lead times from product design to actual production, business uncertainties, lost marketing opportunities, and erosion of profitability caused by such unfair trade practices. This is particularly relevant to industries producing big-ticket items, such as aircraft and heavy electrical equipment, where loss of a single sale may have a major impact on revenues and profits and thus the ability to proceed with research and development or production plans.

Finally, this section clarifies that foreign operations or import operations of domestic producers are not to be considered in measuring the impact of imports on the domestic industry. For example, profits earned by a domestic producer due to products which it imports to meet competition should not be the basis of a negative determination of injury. The domestic industry may be materially injured by reason of unfair imports even if some producers themselves import in order to stay in business. Moreover, economic realities will sometimes dictate that domestic producers import dumped or subsidized products that are in an intermediate stage of processing, complete the processing, and then sell the finished product. In two such cases, *EPROMS* and *Portland Hydraulic Cement and Cement Clinker,* the Commission considered all profits from the sale of the finished product to be attributable to domestic production, even though only minor finishing operations were performed in the United States with respect to a substantial portion of domestic production. It is essential that profits from dumped or subsidized imports be correctly attributed if the Commission is to conduct an accurate injury analysis.

THREAT OF MATERIAL INJURY

(Section 330)

Under current law, in determining whether there is a threat of material injury to a domestic industry, the ITC must consider, among other relevant economic factors, the following:

(1) if a subsidy is involved, the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement);

(2) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States;

(3) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level;

(4) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise;

(5) any substantial increase in inventories of the merchandise in the United States;

(6) the presence of underutilized capacity for producing the merchandise in the exporting country;

(7) any other demonstrable adverse trends that indicate the probability that the importation of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury; and

(8) the potential for product-shifting.

Section 330 adds new factors for the ITC to consider in determining threat of material injury. First, this section adds to the list of threat factors in section 771 of the Tariff Act of 1930 the consideration of the impact of imports on existing efforts of the domestic industry to develop the technology necessary to produce a type of product derived or developed from an earlier type of product. The purpose is to clarify that a threat of material injury can exist when imports affect the industry's research and development for a future generation of related products, as well as its current operations. The Committee has chosen to focus this provision on the industry's existing *efforts* with regard to research and development, rather than its *plans,* in order to emphasize that it is to be applied consistently with current law requiring that the threat of material injury be real and imminent.

Second, this section provides threat considerations applicable when the ITC has information regarding the dumping behavior of the exporters in foreign markets. This provision requires the Commission to consider whether dumping of the same merchandise by the same party in other GATT-member markets suggests a threat of material injury to the U.S. industry. The provision is necessary because a party's past behavior is relevant to its likely future behavior. The notion that a foreign manufacturer's dumping will stop short of causing injury is obviously less persuasive if the importer has already dumped and caused injury elsewhere.

The provision should affect the way the Commission views each of the other factors it must consider. For example, an importer's past history of injurious dumping may supply a strong reason for expecting injurious market penetration at prices that will suppress prices prevailing in the U.S. market; such a history also indicates a likely use to which the foreign manufacturer's expanding or underutilized capacity will be put in the U.S. market.

The problem to which this provision is addressed is illustrated by developments in the world market for outboard motors. In that market, diversified Japanese companies like Yamaha, Suzuki, and Honda compete with a U.S. industry that depends almost entirely on outboard motors and boats for revenue. The Japanese can afford to live with suppressed prices in the outboard motor market for an extended period; the U.S. industry cannot. This is a classic case in which dumping may be used as a marketing strategy, and has been. Japanese outboard motor companies have been subjected to dumping remedies in Europe and Australia, with margins of up to 50 percent and more. Much of the injury in those markets has been aimed at, and has fallen on, subsidiaries of U.S. producers. If the same companies that followed a strategy of injurious dumping in Europe and Australia begin to sell at less than fair value in the U.S., the U.S. industry cannot afford to wait until it is plain to all that the pattern will repeat itself. These circumstances—multiple dumping findings by expert antidumping authorities, a foreign industry with structural incentives for dumping and a record of actually doing so—create a particularly strong inference that injury is threatened. If in addition the foreign manufacturers have already achieved a substantial market penetration and also maintain substantial production capacity that could be diverted to the U.S. market, the combination of their willingness—as evidenced by final positive unfair trade determinations against them in other major markets—and their power to cause injury in the United States conclusively demonstrates that their dumping poses a threat of injury.

LIMITED APPLICATION OF 90-DAY REVIEW AUTHORITY

(Section 331)

Under current law, if the Department of Commerce makes an affirmative preliminary antidumping duty determination, importers must post a cash deposit, bond or other security equal to the estimated antidumping duties. If an antidumping duty order is published on such merchandise, importers must deposit the estimated antidumping duties at the time of importation, rather than post security. Normally, the final determination of antidumping duties due on each entry of such merchandise is either made by the Commerce Department during an annual review, if one is requested, covering the period when the entry was made or is based on the estimated rate of duty, if no annual review is requested.

In certain circumstances, the Commerce Department has the authority to do a review of an antidumping duty order within 90 days of its issuance, rather than waiting until an annual review. If the Commerce Department is satisfied that, based on information presented to it by any manufacturer, producer or exporter of merchandise subject to an order, it will be able to determine, within 90 days after issuing an order, the final antidumping duties owed on imports that entered between the dates of an affirmative preliminary determination, or an affirmative final determination after a negative preliminary determination, by the Commerce Department and an affirmative final determination by the ITC, it may allow an importer to continue posting bond, rather than depositing the estimated antidumping duties, during those 90 days. The results of the expedited review then serve as the basis of the estimated antidumping duties that must be deposited until the next review, if requested.

The Committee bill amends section 736(c) of the Tariff Act of 1930 to limit the circumstances in which the Commerce Department can institute expedited reviews by adding four new conditions for such reviews. The four additional criteria for expedited reviews are:

(1) the original investigation was not designated as extraordinarily complicated by reason of the number and complexity of transactions investigated or adjustments considered, the novelty of the issues in the case, or the number of firms investigated;

(2) the final antidumping duty determination was not postponed because of a request for postponement by the exporters of the merchandise;

(3) the manufacturer, producer or exporter of the merchandise that is providing the information upon which the review will be based provides credible evidence that the amount by which the foreign market value of the merchandise exceeds its U.S. price is significantly less than the amount specified in the antidumping duty order; and,

(4) the data to be considered for purposes of the expedited review apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

The Committee bill would also require the Commerce Department to make all confidential information supplied to it for the purposes of the expedited review available under administrative protective order to all interested parties and afford such parties an opportunity to file written comments on whether the posting of a bond or other security in lieu of the deposit of estimated antidumping duties pending completion of the expedited review is appropriate.

The purpose of this provision is to ensure that any estimated antidumping duties required to be posted because of an antidumping duty order accurately reflect the margin of dumping in a representative time period. It has come to the Committee's attention that, on occasion, the provisions in current law allowing expedited reviews have been used to reduce significantly estimated antidumping duty deposits based on a limited number of sales during the time period examined. Such a practice may encourage the foreign manufacturer, producer, or exporter to drop out of the U.S. market generally after an affirmative preliminary antidumping duty determination, but for a few sales at (or near) fair value that might serve as a basis for an expedited review that would result in no (or low) estimated antidumping duties when the original investigation found significant dumping margins.

APPLICATION OF COUNTERVAILING AND ANTIDUMPING DUTIES TO GOVERNMENTAL IMPORTATIONS

(Section 332)

Current law does not specify whether antidumping and countervailing duties apply to governmental importations. It has come to the attention of the Committee that government purchases of imported merchandise have on occasion been exempted from such duties that were otherwise applicable.

Section 332 of the Committee bill clarifies that, in general, merchandise imported by, or for the use of, a department or agency of the U.S. Government (including merchandise provided under schedule 8 of the Tariff Schedules of the United States) is subject to the imposition of antidumping and countervailing duties. The bill provides two exceptions in which such duties would not apply to importations by, or for, the U.S. Government:

(1) if the merchandise is imported by, or for the use of, the Department of Defense and is subject to any Department of Defense Memorandum of Understanding which existed on or before May 6, 1987; or,

(2) if the market in the United States for the class or kind of merchandise subject to such duties is normally limited to governments, or agencies or instrumentalities of governments.

The purpose of this provision is to clarify that, in general, importations by, or for the use of, the U.S. Government may not be granted special treatment that would exempt the Government from paying duties imposed to offset foreign unfair trade practices. However, the Committee does not intend that this general rule conflict with international obligations of the United States. Therefore, the bill specifies that antidumping and countervailing duties shall not be imposed if the merchandise is imported for the Defense Department and is subject to any Department of Defense Memorandum of Understanding that existed before the date on which the Committee adopted this provision. If such Memoranda are amended or renewed, this exception would not apply. However, to the extent that renewed or amended Memoranda cover merchandise for which the U.S. market is normally limited to governments, the second exception provided under the Committee bill would apply.

The Committee believes that an exemption from antidumping or countervailing duties for purchases by the U.S. Government is inconsistent with the U.S. policy of acting against unfair trade practices. The Government is obligated to enforce vigorously the unfair trade laws, even as they apply to its own activities. However, the Committee recognizes the special nature of government-to-government trade in certain defense items. The Committee believes that the two exceptions to the general rule provided by this provision will accommodate these situations. Existing Memoranda of Understanding regarding defense trade will not be abrogated; however, in the future, the U.S. policy is that, if a product is freely traded and available on a commercial basis, the U.S. Government shall be treated like any other U.S. importer of that product.

73-814 O - 87 - 5

DETERMINATION OF SUBSIDIES

(Section 333)

Under section 701 of the Tariff Act of 1930, if the Department of Commerce determines that a subsidy is being provided, directly or indirectly, with respect to the manufacture, production, or export of merchandise imported into the United States and if the ITC determines that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of such imports, a countervailing duty shall be imposed equal to the net subsidy. Section 771(5) of the 1930 Act states that the term "subsidy" has the same meaning as the term "bounty or grant" under section 303 of the Act, and includes, but is not limited to, the following:

(1) Any export subsidy described in Annex A to the GATT Agreement on Subsidies and Countervailing Measures.

(2) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(a) The provision of capital, loans, or loan guarantees or terms inconsistent with commercial considerations.

(b) The provision of goods or services at preferential rates.

(c) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(d) The assumption of any costs or expenses of manufacture, product, or distribution.

The Committee bill amends section 771(5) of the 1930 Act to add a special rule clarifying that, in each investigation, the Commerce Department shall determine whether the bounty, grant, or subsidy in law or in fact is provided to a specific enterprise or industry, or group of enterprises or industries. The rule states that nominal general availability, under the terms of the law, regulation, program, or rule establishing a bounty, grant or subsidy, of the benefits thereunder is not a basis for determining that the bounty, grant or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.

The Committee intends that this provision codify the holding by the U.S. Court of International Trade in *Cabot Corporation* v. *United States,* 620 F. Supp. 722 (CIT 1985) that, in order to determine whether a domestic subsidy is countervailable, the Commerce Department must examine on a case-by-case basis whether the benefits provided by a program are bestowed upon a specific enterprise or industry, or group of enterprises or industries. In *Cabot,* the Court held that:

> The appropriate standard [for determining the countervailability of benefits] focuses on the *de facto* case by case effect of benefits provided to recipients rather than on the nominal availability of benefits.

In *Cabot*, the court held that nominl general availability of a subsidy should not be conclusive evidence that a subsidy is not provided to a specific industry. Instead, the Commerce Department must look on a case-by-case basis to the actual availability of a subsidy. A subsidy provided in law to a specific industry is clearly countervailable. The issue addressed in *Cabot* is whether a subsidy provided in fact to a specific industry is countervailable.

The purpose of the Committee provision is to correct past Commerce Department practice interpreting section 771(5)(B) in an overly narrow manner. Prior to the *Cabot* decision, the Commerce Department had held that benefits obtainable by any enterprise or industry, i.e., generally available, within the relevant economy were normally not countervailable. The Commerce Department based its "generally available benefits rule" on the statute's reference to countervailable domestic subsidies as those provided to a "specific" enterprise or industry. In a subsequent review of the determination under review in the *Cabot* case, the Commerce Department recognized that it had applied this test in an overly restrictive manner and determined that there were too few users of carbon black feedstock in Mexico to find that the benefit bestowed by providing such feedstock to domestic users at lower prices than the prices at which it was exported was generally available.

Cabot notes that, in enumerating some examples of countervailable subsidies, Congress explicitly states that the list is not inclusive. The Court concludes that "The determination of whether a bounty or grant has been bestowed must therefore be made upon the facts of each case." The Committee agrees with the Court's conclusion and intends this provision to require the Commerce Department to determine whether a bounty, grant, or subsidy is in fact, provided to, a discrete class of beneficiaries.

REVOCATION OF STATUS AS A COUNTRY UNDER THE AGREEMENT

(Section 334)

Under section 701 of the Tariff Act of 1930, if the Department of Commerce determines that a country to which the United States accords the benefits of the GATT Agreement on Subsidies and Countervailing Measures (a "country under the Agreement") is providing a subsidy on the manufacture, production or exportation of a product that is being imported into the United States, a countervailing duty to offset the subsidy must be imposed if the ITC determines that an industry is being materially injured, or threatened with injury, by reason of the subsidized imports. If the subsidized imports are from a country that is not considered a "country under the Agreement," countervailing duties may be applied under section 303 of the 1930 Act regardless of whether a domestic industry is being injured by such imports, unless the product is duty-free and from a country with which we have an international obligation to provide an injury finding, *i.e.*, the country is a member of the GATT.

Section 701(b) of the 1930 Act defines the term "country under the Agreement" as meaning a country:

(1) between the United States and which the Agreement on Subsidies and Countervailing Duty Measures (the GATT "Subsidies Code") applies;

(2) which the President determines has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Subsidies Code; or,

(3) between the United States and which there is an agreement in effect that requires unconditional most-favored-nation treatment of imports into the United States and meets the other requirements of section 701(b)(3) of the 1930 Act, as determined by the President.

Section 334 of the Committee bill authorizes the USTR to revoke a foreign country's status as a "country under the Agreement" if such country either:

(1) announces that it does not intend or is not able to honor the obligations with respect to the United States or the Agreement that it has assumed; or,

(2) does not in fact honor such obligations.

Prior to enactment of the Trade Agreements Act of 1979, U.S. countervailing duty law did not require that a domestic industry prove material injury by reason of subsidized imports for a duty to be imposed to offset such subsidies. Since the 1979 Act, countries that have agreed to assume the obligations of the GATT Subsidies Code have been entitled to an injury test before countervailing duties are imposed.

In practice, foreign governments have sought the injury test by signing bilateral agreements or the Subsidies Code in which they assume certain obligations to phase out or eliminate trade-distorting subsidies. The bilateral agreements concerned involve a clearly understood *quid pro quo* whereby foreign governments enter into commitments regarding their subsidies in return for an injury test under U.S. countervailing duty law. If a country has failed to honor its commitments, there is no reason for the United States to continue to be bound by its part of the understanding.

The Committee is concerned that, in some cases, the commitments made in the past by foreign governments, and accepted by the United States as a basis for granting the injury test, have not been honored. The purpose of this provision is to ensure that the commitments of foreign governments are honored if the United States is to continue providing an injury test in countervailing duty cases. In particular, the Committee expects the USTR to review the Brazilian and Indian commitments in light of this provision, and to determine whether either country should no longer be considered a "country under the agreement" if the USTR concludes that it has not honored its obligations under the agreement. The Committee expects the USTR to report the results of this review to the Senate Finance and House Ways and Means Committees within six months.

In determining whether to revoke a country's status as a "country under the Agreement," the USTR may take into account the progress or lack thereof that a country has made in meeting its commitments and the likelihood that the commitments will be fully honored within a short period of time.

The Committee expects that this provision shall apply whether or not any bilateral or Subsidies Code agreement explicitly provides for provisional application or revocation. The Committee further expects that, for any country as to which "country under the Agreement" status is revoked, such status shall be restored only if the country is fully in compliance with its commitments, has agreed to phase out its export subsidies and made demonstrable progress in that direction, and has recognized the right of the United States to withdraw the injury test in the event such country does not honor its commitments.

U.S. countervailing duty law is silent as to how, and by what authority, an injury test can be applied where the requirement of an injury test arises after a countervailing duty order has been issued. The Committee took no action on the retroactive application of the injury test with respect to such orders pending resolution of cases now under judicial review.

ALL LEASES TREATED AS SALES UNDER COUNTERVAILING DUTY PROVISIONS

(Section 335)

Pursuant to sections 701 and 731 of the Tariff Act of 1930, the antidumping and countervailing duty laws cover, in addition to sales of the merchandise under investigation, any leasing arrangement which is equivalent to a sale of that merchandise.

Section 335 of the bill would delete the section 701 requirement that only those leases which are "equivalent to a sale" may be investigated, thereby ensuring that all forms of leasing will be encompassed by the countervailing duty law. The amendment does not alter the antidumping law, which will continue to cover only those leases which are equivalent to a sale of the merchandise under investigation.

Subsidized foreign manufacturers presently have an opportunity to circumvent the countervailing duty law by offering U.S. customers lease terms which might not be regarded as fully equivalent to a sale of the imported merchandize. Subsidized imports marketed through such leases present no less an unfair threat to U.S. industry then subsidized sales or lease transactions which are in all respect equivalent to sales. By explicitly including all leases within the scope of the law, opportunities for circumvention of countervailing duties through imaginative leasing arrangement will be eliminated.

FICTITIOUS MARKETS

(Section 336)

Current antidumping duty law provides for the imposition of antidumping duties equal to the amount by which the foreign market value of the imported merchandise exceeds its U.S. price. As defined under section 773(a)(1) of the Tariff Act of 1930, the foreign market value of imported merchandise is generally based on the price at which such or similar merchandise is sold, or offered for sale, in the home market of the country from which it is exported. Section 773(a)(1) further states that, in ascertaining foreign market value, no sale or offer for sale intended to establish a fictitious market shall be taken into account. However, the statute provides no examples of "fictitious market" situations and, in practice, Commerce has seldom investigated allegations of fictitious markets being created.

The Committee bill amends section 773(a) of the 1930 Act to add a new paragraph providing that the occurrence of different movements in the prices at which different forms of any merchandise subject to an antidumping duty order are sold, or offered for sale, in the principal markets of the foreign exporting country may be considered by the Department of Commerce as evidence of the establishment of a fictitious market for the merchandise if the movement in such prices appears to reduce the amount by which the foreign market value of the merchandise exceeds the U.S. price.

The purpose of this provision is to highlight one particular example of a fictitious market. It has come to the Committee's attention that fictitious markets may be created relatively easily when merchandise is produced and sold in multiple forms. If a foreign manufacturer or producer exports only one of such forms to the United States and has been found to be dumping that form, he may artificially set his home market prices of the different forms to reduce the amount by which the foreign market value of the identical merchandise exceeds the U.S. price of such merchandise. If only sales of the identical merchandise are used in determining the foreign market value, the net effect of such artificial pricing may be to eliminate any finding of dumping even though the average home market price of the different forms of the merchandise may still exceed the U.S. price of the imported merchandise.

For example, a chemical product may be produced and sold in powder and granular forms, both of which have similar uses and production costs. If a foreign manufacturer who produces and sells both products in his home market is found to be dumping the powder product in the United States, the only form that the manufacturer exports, he can minimize any antidumping duties finally assessed, and avoid a finding of sales at less than fair value during any review under section 751, by lowering his home market price for the powder product while maintaining or raising his home market price for the granular product.

If the Commerce Department has reason to believe that a fictitious market is being created by varying movements in the prices of different forms of the merchandise under investigation, the Commerce Department is authorized to collect information on the home market sales of all forms of the product and all claimed differences in merchandise for the various forms regardless of whether all forms are exported to the United States during the period being investigated. The Committee believes that such artificial movements in pricing could result in circumvention of the antidumping duty law and that it is the Commerce Department's responsibility to enforce the provisions of the law with respect to fictitious markets to prevent such circumvention.

EFFECTIVE DATES

(Section 337)

Section 337 sets forth the effective dates for the various amendments made by this bill to the antidumping and countervailing duty laws. Those provisions which specifically apply only to investigations after the date of enactment of this Act do not apply to reviews of outstanding orders under section 736(c) or 751 of the Tariff Act of 1930.

Title IV. Intellectual Property Rights

Title IV contains provisions which are designed to strengthen U.S. intellectual property right protection both domestically and internationally. The Committee places great importance on this issue because it believes that the technology and innovativeness of U.S. companies is unparalleled in the world. However, without adequate protection of these intellectual property rights, U.S. companies are at a significant disadvantage in competing in the world marketplace. This title amends section 337 of the Tariff Act of 1930, and provides for monitoring of technology transfers and promotion of foreign systems for protecting intellectual property rights.

SUBTITLE A. INTELLECTUAL PROPERTY REMEDIES

REMEDIES UNDER THE TARIFF ACT OF 1930

(Section 401)

Injury to "Efficiently and Economically Operated" U.S. Industry

Section 337 of the Tariff Act of 1930 provides for relief against unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale, if the effect or tendency of such actions is to destroy or substantially injure an efficiently and economically operated industry in the United States.

The U.S. International Trade Commission has the responsibility under section 337 to conduct an investigation of alleged violations of this provision either upon a complaint being filed by an interested party or upon its own motion. If the Commission finds that a violation of this statute has occurred and determines that such relief is justified after considering the effect of the relief "upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States and United States consumers," it may provide relief in the form of an exclusion order or a cease and desist order.

Section 401 amends section 337 in several important respects. First of all, it eliminates the need to demonstrate injury to, or the prevention of the establishment of, an industry in the United States for certain intellectual property rights cases. Those cases involve registered mask works and intellectual property which is protected by a valid and enforceable United States patent (including products and processes), copyright, or registered trademark. Examples of cases not affected by this change include trade secrets, common law trademarks, false advertising, and antitrust violations. Second, section 401 eliminates in all cases the requirement to establish that an industry in the United States is "efficiently and economically operated." Third, in those cases in which the requirement of demonstrating injury to, or prevention of the establishment of, an industry is retained, the standard of "prevention of establishment" is broadened to encompass impairment as well as prevention of establishment. Finally, although the injury standard would be eliminated, complainants in intellectual property rights cases would still have to demonstrate that an industry in the United States relating to the articles or intellectual property right concerned "exists or is in the process of being established."

In cases involving a patent, copyright, trademark, common-law trademark, trade secret, or mask work, an industry in the United States is considered to exist if there is, with respect to the articles or intellectual property right concerned, in the United States—

1. significant investment in plant and equipment;
2. significant employment of labor or capital; or
3. substantial investment in its exploitation, including engineering, research and development, or licensing.

The fundamental purpose of the amendments made by section 401 is to strengthen the effectiveness of section 337 in addressing the growing problems being faced by U.S. companies from the importation of articles which infringe U.S. intellectual property rights.

Infringing imports were not the primary concern of Congress when the predecessor of section 337 was initially enacted in 1922. As indicated by the scope of its language, section 337 was designed to cover a broad range of unfair acts not then covered by other unfair import laws. However, over the years, patent, copyright, and trademark infringement were recognized as unfair practices within the meaning of section 337, and today section 337 is predominantly used to enforce U.S. intellectual property rights. According to a 1986 Government Accounting Office (GAO) study, 95 percent of the section 337 cases initiated since 1974 involve statutory intellectual property rights. The Committee believes that the injury and efficient and economic operation requirements of section 337, designed for the broad context originally intended in the statute, make no sense in the intellectual property arena.

The owner of intellectual property has been granted a temporary statutory right to exclude others from making, using or selling the protected property. The purpose of such temporary protection, which is provided for in Article I, Section 8, Clause 8 of the United States Constitution, is "to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their respective Writings and Discoveries." In return for temporary protection, the owner agrees to make public the intellectual property in question. This trade-off creates a public interest in the enforcement of protected intellectual property rights. Any sale in the United States of a product covered by an intellectual property right is a sale that rightfully belongs only to the holder or licensee of that property. The importation of any infringing merchandise derogates from the statutory right, diminishes the value of the intellectual property, and thus indirectly harms the public interest. Under such circumstances, the Committee believes that requiring proof of injury, beyond that shown by proof of the infringement of a valid intellectual property right, should not be necessary.

The Committee notes that in adopting section 401, it is effectively eliminating the requirements that the domestic industry be "economically and efficiently operated" and that the infringement have the tendency or effect of destroying or substantially injuring the domestic industry from section 337 insofar as they apply to intellectual property cases. The Committee does not intend that the ITC, in considering the public health and welfare, or the President, in reviewing the ITC's determination on policy grounds, will reintroduce these requirements.

Although the injury test has been eliminated for certain intellectual property rights cases, a complainant must still establish that a U.S. industry relating to the articles or intellectual property right concerned "exists or is in the process of being established." This requirement was maintained in order to preclude holders of U.S. intellectual property rights who have no contact with the United States other than owning such intellectual property rights from utilizing section 337. The ITC is to adjudicate trade disputes between U.S. industries and those who seek to import goods from abroad. Retention of the requirement that the statute be utilized on behalf of an industry in the United States retains that essential nexus.

The domestic industry requirement should not be interpreted in an unduly narrow manner, however. The definition specifies that an industry exists in the United States with respect to a particular article involving an intellectual property right if there is, in the United States—

1. significant investment in plant and equipment;
2. significant employment of labor or capital; or
3. substantial investment in the exploitation of the intellectual property right including engineering, research and development or licensing.

The first two factors in this definition have been relied on in prior Commission decisions finding that an industry exists in the United States. The third factor, however, goes beyond the ITC's recent decisions in this area. This definition does not require actual production of the article in the United States if it can be demonstrated that substantial investment and activities of the type enumerated are taking place in the United States. Marketing and sales in the United States alone would not, however, be sufficient to meet this test. The definition could, however, encompass universities and other intellectual property owners who engage in extensive licensing of their rights to manufacturers.

The phrase "or in the process of being established" with regard to the industry requirement recognizes that there may be situations where, under the above definition, an industry does not currently "exist" but a party should nevertheless be entitled to bring a section 337 action. For example, if a new product is developed in the United States and is protected by a U.S. intellectual property right, the owner of the intellectual property right would not have to wait to bring an action under section 337 until he can satisfy the definition of industry, if he can demonstrate that he is taking the necessary tangible steps to establish such an industry in the United States.

The mere ownership of a patent or other form of intellectual property rights would not be sufficient to satisfy this test. The owner of the property right must be actively engaged in steps leading to the exploitation of the intellectual property, including application engineering, design work, or other such activities. The Commission should determine whether the steps being taken indicate a significant likelihood that the industry requirement will be satisfied in the future. Because this statute is not intended to protect holders of U.S. intellectual property rights who have only limited contact with the United States, the Committee does not want to see this language used as a loophole to the industry requirement. The Committee does intend this language, however, to protect from infringement those holders of U.S. intellectual property rights who are engaged in activities genuinely designed to exploit their intellectual property within a reasonable period of time.

Finally, it is noted that the changes in this section are not intended to change existing law or practice regarding parallel imports or gray market goods. The substantive rights of intellectual property right owners and independent importers with respect to this issue are unaffected by these amendments, since the underlying statutes governing patents, copyrights, trademarks or mask works have not been changed. The law to be applied in section 337 cases raising this issue is the law as interpreted by United States courts.

Termination of Investigation by Consent Order or Settlement Agreement

Section 401(a)(2) amends section 337(b)(1) to authorize the Commission to terminate investigations, in whole or in part, by issuing consent orders or on the basis of settlement agreements. The Commission has for a number of years terminated section 337 investigations in these ways without making a determination regarding whether the statute has been violated, under authority derived from the Administrative Procedure Act, specifically 5 U.S.C. 554(c)(1). The amendment provides express authority for such terminations. It is intended to put to rest any doubts regarding the Commission's authority to terminate investigations by issuance of consent orders or on the basis of settlement agreements without making a determination regarding violation of the statute.

Exclusion of Articles During Investigation

Under section 337, the Commission is empowered to issue both temporary and final exclusion orders prohibiting the entry of merchandise. There are no time limits for the issuance of temporary exclusion orders, however.

Section 401(a)(3) amends section 337(e) to require the Commission to rule on petitions for a temporary exclusion order within 90 days (150 days in more complicated cases) of publication of the Commission's notice of investigation in the *Federal Register*; to authorize the Commission to require the petitioner to post a bond as a prerequisite to the issuance of a temporary exclusion order, and to authorize the Commission to grant preliminary relief in cases involving alleged patent, copyright, registered trademark, or mask work infringement to the same extent as preliminary injunctions and temporary restraining orders may be issued by the federal district courts.

Experience under the present statute has shown that the Commission sometimes provides temporary relief to complainants too late to benefit them. This section addresses this problem by amending subsection (e) to require a Commission determination regarding issuance of a temporary exclusion order within 90 days (150 days in more complicated investigations) of institution of the investigation. It is expected that the Commission will decide whether to issue such orders using the standards and procedures employed by the Federal district courts when they decide whether to issue preliminary injunctions. In making this change, the Committee is codifying existing Commission practice in this regard.

In cases involving alleged patent, copyright, registered trademark, or mask work infringement, the section authorizes the Commission to grant temporary exclusion orders to the same extent as preliminary injunctions and temporary restraining orders are granted by Federal district courts under the Federal Rules of Civil Procedure. The Committee specifically intends by this language that the Commission apply the standards used by the Federal courts in reviewing requests for preliminary injunctions in intellectual property cases, for example, those articulated by the Court of Appeals for the Federal Circuit—the Commission's reviewing court in section 337 cases—in *Smith International* v. *Hughes Tool Co.*, 718 F.2d 1573 (Fed. Cir. 1983).

Section 337(f) now provides for the Commission's use of cease and desist orders "in lieu of" the exclusion of articles. Penalties for the violation of such orders are set at the greater of $10,000 or the domestic value of the articles. Section 401(a)(4) amends subsection (f)(1) in two respects. It authorizes the Commission to issue cease and desist orders *in addition* to exclusion orders, and it raises the penalty for violation of such orders to $100,000 or twice the domestic value of the articles.

The Commission has interpreted the current language as prohibiting it from issuing both an exclusion order and a cease and desist order to remedy the same unfair act. There are circumstances, however, where it is in the public interest to issue both. For example, a cease and desist order prohibiting a domestic respondent from selling the imported infringing product in the United States may be appropriate when the product has been stockpiled during the pendency of an investigation and an exclusion order may be appropriate to prevent future shipments of the infringing product. When the Commission determines that both remedies are necessary, it should be without legal question that the Commission has authority to order such relief. This amendment provides that authority.

Default Judgments

Section 401(a)(5) adds a new subsection which requires the Commission, in cases involving defaulting respondents, to presume the facts alleged in the complaint to be true and, upon request, to issue relief against the defaulting respondents, unless the enumerated public interest factors (the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers) preclude relief. However, a general exclusion order prohibiting the entry of unfairly traded articles regardless of their source may not be issued unless no person appeared to contest the investigation and a violation of section 337 has been established by substantial, reliable, and probative evidence.

This amendment is motivated by the fact that discovery is usually difficult or impossible to obtain from respondents who have chosen not to participate in a section 337 investigation. For this reason, the bill authorizes the Commission to presume the facts alleged in the complaint to be true insofar as they involve a defaulting respondent, and to then issue relief limited to that respondent. The amendment will therefore not affect participating respondents. Relief in the form of a general exclusion order must be supported by a Commission determination of violations of the Act based on substantial, reliable, and probative evidence. Complainants would declare at the time the last remaining respondent is found to be in default whether they are pursuing a general exclusion order.

Abuse of Process

Section 401(a)(5) also adds a new subsection authorizing the Commission to promulgate rules prescribing sanctions for abuse of discovery and abuse of process to the extent authorized by Rules 11 and 37 of the Federal Rules of Civil Procedure. The Committee believes that Commission rules prescribing sanctions for abuse of discovery and abuse of process are needed to provide the Commission and its administrative law judges with an additional tool by which to control the discovery process.

Seizure and Forfeiture

Finally, section 401(a)(5) also provides authority for the Commission to order the seizure and forfeiture to the United States of articles imported in violation of section 337. The provision permits an order of seizure and forfeiture of an article that is subject to an exclusion order when the owner, importer, or consignee has previously attempted to import the article, it was previously denied entry by reason of an exclusion order issued by the Commission under section 337, and the Customs Service provided notice at the time of the previous denial of entry that a further attempt to enter the article would result in seizure and forfeiture. The purpose of this provision is to give the Customs Service the means by which to deter and sanction the practice of "port-shopping" under which some importers attempt to circumvent section 337 exclusion orders.

Modification or Rescission of Exclusion Orders and Cease and Desist Orders

Section 401(a)(6) amends section 337 to require that persons who have previously been found in violation of section 337 and who have petitioned the Commission for modification or recission of a remedial order bear the burden of proof in any Commission proceeding regarding their petition. The bill also provides that the Commission may grant the petition only on the basis of new evidence or evidence that could not have been presented during the proceeding that resulted in the remedial order or on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure. This provision is intended to codify existing Commission practices.

U.S. Government Importations

Currently, importations by or for the use of the U.S. Government are exempt from ITC exclusion orders in cases based on patent claims. Section 401(a)(7) expands the exemption to include cases based on copyrights, trademarks, trade secrets, and mask works. The provision of current law providing reasonable compensation to the owner of the property right is retained.

Confidential Information

Section 401(a)(8) adds a provision prohibiting the disclosure, except under protective order or to employees of the Commission or the U.S. Customs Service responsible for the investigation or administration of an exclusion order, of confidential information submitted to the Commission or exchanged among the parties in connection with a section 337 investigation, without the consent of the person submitting the information.

A great deal of information, disclosure of which would harm the competitive position of the submitter, is collected as part of the record in section 337 investigations. Under current Commission practice, this information is disclosed under protective order to counsel involved in the investigation, but not to their clients or to the public. Companies have expressed concern that in the future the Commission might change its present policy regarding release, and decide to release information it no longer considers confidential, but which the submitter does consider confidential. This amendment addresses that concern.

Effective Date

The amendments made by section 401 would become effective with respect to Commission findings made on or after the date of enactment. The Commission is authorized to extend for an additional 3 months the deadline for completing any investigation due to be completed within 6 months after enactment which it declares to be complicated.

SUBTITLE B. ACCESS TO TECHNOLOGY

FINDINGS

(Section 411)

This section sets out Congressional findings that international protection of intellectual property rights is vital to the competitiveness of the United States and that foreign barriers on investment, licensing, and the like seriously impede the ability of U.S. firms that rely on intellectual property protection to operate overseas. It further notes that foreign governments' requirements that technology be transferred as a condition of importing or doing business in a country constitute unreasonable burdens on U.S. commerce, and that equitable technology exchange is essential to reciprocity in international competition and ought to be a bilateral and multilateral negotiating objective.

MONITORING OF TECHNOLOGY TRANSFERS

(Section 412)

This section requires the USTR, in conjunction with the National Science Foundation, to continually monitor the transfer of technology between the United States and foreign countries, and prepare an annual report on such transfers. The report is to be included in the National Trade Estimate submitted to the Senate Committee on Finance and the House Committee on Ways and Means under section 181(b)(1) of the Trade Act of 1974.

MONITORING FOREIGN INTELLECTUAL PROPERTY SYSTEMS

(Section 413)

Under this section the Secretary of Commerce is required to designate a Foreign Commercial Service officer in a foreign country to be responsible for monitoring and reporting on the status of the intellectual property system in that country. The purpose of this provision is to develop a data base capable of informing U.S. exporters and investors of the degree, kinds and effectiveness of protection each country affords to intellectual property rights. It will also be useful in determining the nature of foreign assistance needed under section 414.

FOREIGN ASSISTANCE FOR DEVELOPMENT OF PROGRAMS TO PROTECT INTELLECTUAL PROPERTY RIGHTS

(Section 414)

Section 414 amends the Foreign Assistance Act of 1961 to authorize, but not require, the President to furnish assistance, after consultation with the Secretary of Commerce, for programs to aid less developed countries in developing and implementing adequate intellectual property laws. The Secretary would be required to identify the technical assistance needs of less developed countries. The aim of this provision is for the mutual benefit of the United States and each affected less developed country. It not only would aid less developed countries establish modern, comprehensive intellectual property protection systems that would foster the development of indigenous technologies, but would encourage U.S. investment and sales in such countries by firms that rely on intellectual property protection.

UNITED STATES INTELLECTUAL PROPERTY TRAINING INSTITUTE

(Section 415)

The Secretary of Commerce is required by this section to establish an institute to train individuals of developing nations in the management and technical skills necessary to carry out a system for protecting intellectual property rights. Similar to section 414 authorizing aid to less developed countries, the rationale of this provision is to both aid in development of foreign systems for intellectual property and to foster the protection of U.S. firms' intellectual property rights abroad. Nothing in this section is intended to preclude the Secretary of Commerce from drawing on existing programs and facilities in establishing the Institute.

Title V. National Security

IMPORTS THAT THREATEN NATIONAL SECURITY

(Section 501)

Section 232 of the Trade Expansion Act of 1962, as amended, requires the Secretary of Commerce, upon request or on his own motion, to conduct an investigation to determine the effects of imports of an article on the national security. He must report his findings and recommendations to the President within one year. If the Secretary finds "an article is being imported in such quantities or under such circumstances as to threaten to impair the national security," the President, unless he reverses the determination, must take such action for such time as he deems necessary to "adjust" the imports of the article and its derivatives so they will not threaten to impair the national security. There is no time limit for the President's decision.

Section 501 amends section 232(b) of the Trade Expansion Act of 1962 to require the Secretary of Commerce to report his findings and recommendations to the President within 180 days rather than one year. It also imposes a time limit of 90 days after he receives the report for the President to take action or refuse to take action to adjust the imports. The President would be required to make a written statement of his reasons for taking or not taking action.

The basic need for the amendment arises from the lengthy periods provided by present law—one year for investigations and no time limit for decisions by the President—before actions to remove a threat posed by imports of particular products to the national security are taken. For example, in the machine tools case, the President waited over 2½ years before taking any action to assist the domestic industry. The Committee believes that if the national security is being affected or threatened, this should be determined and acted upon as quickly as possible.

Other amendments to section 232 are designed to ensure that the Cabinet department with the greatest responsibility and expertise over national security matters has a role in recommending whether the President take action. Thus, section 501 includes the requirement that the Secretary of Defense make a defense needs assessment with respect to the article under investigation and submit it to the Secretary of Commerce within three months of initiation of the investigation. The Secretary of Commerce's report to the President must include the defense needs assessment. The Commerce report, or any portion of it, may be classified only if public disclosure "would clearly be detrimental to the security of the United States." Any portion that is not classified and is not proprietary information shall be published in the Federal Register.

Finally, section 501(c) amends section 232 to provide explicit authority to enforce the quantitative limitations, restrictions, and other terms of the voluntary restraint agreements (VRA's) on machine tool imports negotiated pursuant to the President's decision of May 1986 with respect to machine tool imports, as well as authority to enforce future VRA's negotiated as a result of a section 232 investigation.

Section 501 complements this enforcement authority by also clarifying in statutory language that the President's range of options for action against imports under section 232 includes authority to negotiate VRA's. Negotiations are limited to six months after the 90-day period given the President in which to decide whether to take action in order to prevent open-ended negotiations that would subvert the time limits. After that time, if no agreement has been reached, the President is required to take such action as he deems necessary.

The purpose of this amendment is to provide the Administration with the authority it needs to enforce the machine tool VRA's entered into pursuant to the President's May 1986 decision, and to ensure the President's authority to enter into and enforce future VRA's. While the Committee expects that foreign countries will honor the commitments they have made pursuant to the VRA's, it is the Committee's intent to ensure that the terms of these VRA's are followed and, if need be, enforced through the authority granted in this section.

ENERGY SECURITY

(Section 502)

The Finance Committee held hearings on this provision, the Energy Security Act, on March 25, 1987. The provision specifies that the President shall monitor prospective crude oil and oil product imports to prevent excessive domestic reliance on imports. It is designed to minimize the likelihood that the American economy and national security will be disrupted once again by interruptions in oil supply similar to those experienced in the 1970's.

Under this section, the President would be required to establish a national oil import ceiling, which represents a level beyond which imports of foreign crude oil and oil products will not be allowed to rise as a share of U.S. oil consumption. The ceiling level shall not be allowed to exceed 50 percent of U.S. consumption of these products for any year.

The President is required to prepare and submit an annual report to the Congress containing a national oil security projection. The projection shall contain a forecast of domestic oil and natural gas liquid demand and production, and of imports of petroleum or petroleum products for the subsequent three years. The projection is to contain adjustments for expected price and production changes. The projection is to be submitted to the Congress with the annual budget, and is required to certify whether foreign crude oil and oil products will exceed the ceiling level for any of the following three years. Congress would have 10 continuous session days after submission of the projection to make a determination whether the ceiling level will be exceeded during the subsequent three years. The President's certification would be binding unless disapproved or modified by joint resolution within that period.

Upon certification that the ceiling level will be exceeded, the President is required within 90 days to submit an energy production and oil security policy to Congress. The Committee anticipates that formulation of this policy would be coordinated by the Department of Commerce, in consultation with other appropriate agencies. The purpose of the policy is to prevent imports from exceeding the ceiling level. It will be effective 90 session days after submission unless disapproved or modified by joint resolution.

The policy may utilize, among other things, all powers available to the President under section 232 of the Trade Expansion Act of 1962, as amended by this bill. This allows the President to choose from a broad range of options when he acts to adjust petroleum imports.

The purpose of this legislation is to prevent a return to the market disruptions experienced in the 1970's. Those disruptions had dramatic economic effects. According to research compiled by the Congressional Research Service (CRS) and measured in 1982 dollars, the 1973 petroleum embargo reduced national income over the ensuing four years by from $430 billion to $610 billion. Over five years, the loss totaled $745 billion. In the years immediately after the embargo, the American economy fell into a recession, with growth falling by 0.5 percent in 1974 and 1.3 percent the following year. Unemployment had leaped nearly three percentage points, and by 1975 more Americans were unsuccessfully seeking work than at any time since the Great Depression.

That embargo had such disruptive effects because American and world dependence on imported oil produced by members of the Organization of Petroleum Exporting Countries (OPEC) had become excessive. Imports comprised 35 percent of domestic consumption in 1973 with OPEC accounting for nearly one-half. OPEC's share of worldwide production exceeded 50 percent in 1973.

The sharp increase in oil prices in the mid-1970's encouraged exploration. Drilling expanded handsomely. Domestic dependence on imports dwindled gradually to a low of 27 percent in 1985 as North Slope, North Sea and other non-OPEC oil resources expanded. Yet, OPEC remained the low-cost producer and still provided 30 percent of world output in 1985. OPEC increased that market share and reasserted its control of world oil markets with sharp price cuts in late 1985. The erratic decline in world oil prices which persisted through 1986 played havoc with the domestic industry. Falling prices caused domestic production to fall eight percent or by 830,000 barrels last year, and sent import dependence jumping toward 40 percent. Drilling activity declined by one-half, and one in five oil industry jobs were lost as cash flow and credit constraints hobbled production.

The decline in output and production activity masks far more profound and severe effects on domestic exploration. OPEC's reassertion of market control exposed the domestic energy industry and its creditors to a future of price volatility. As a consequence, petroleum exploration, always inherently risky, has ground nearly to a halt. One in four petroleum geologists are unemployed, comparable to the rate in 1932, and the rate ranges as high as 35 percent in Colorado and Oklahoma. Proven domestic reserves comparable to 15 years' consumption exist now, but reserve additions are lagging well behind consumption. According to the Department of Energy, the number of crews engaged in seismic exploration has plunged nearly two-thirds since 1985. The number of exploratory and development oil wells dropped 60 percent. Moreover, the total footage of such wells is off even more, further indication of an expected sharp truncation in domestic petroleum reserves in a volatile price environment. Compounding this disquieting impact on petroleum security is the looming decline within two years of production from the giant Prudhoe Bay fields and the British sector of the North Sea. Indeed, a forthcoming CRS analysis concludes that the present OPEC price environment will cause petroleum production declines in the following western hemisphere nations by 1995 (along with other nations like the Soviet Union and Egypt): Argentina, Brazil, Canada, Columbia, Peru, and the United States.

The rising risks of another OPEC embargo due to declining production and rising dependence are increasingly acknowledged. In submitting his report on energy security to the President in March 1987, Secretary of Energy John S. Herrington concluded that, "The crisis in the domestic petroleum industry . . . is taking an enormous toll and is creating serious problems for the future." In his response to this report, the President stated that dependence on foreign oil has "serious implications for national security."

The National Petroleum Council has concluded that, "The United States and other consuming nations face the serious threat of a repeat of the energy crisis of the 1970's." Earlier, Secretary of the Interior and former Secretary of Energy Donald Hodel predicted that Americans will be standing in gasoline lines within two to five years. Both the National Petroleum Council and the Department of Energy expect domestic production to decline 25 to 40 percent by 1995 and import dependence to breach 50 percent in the 1990's. The Congressional Budget Office (CBO) and DRI, Inc. suggest that this import dependence threshold will be passed in 1991 and 1990, respectively. The bulk of these new imports will be OPEC petroleum. The share of imported oil from OPEC rose to 45 percent last year from 35 percent in 1985, while the OPEC share of world production increased to 34 percent. The CRS estimates that OPEC petroleum will comprise 75 percent of the world oil trade by the year 2000.

Growing dependence on imports and OPEC reassertion of market control since late 1985 have heightened the economic and national security risks of another embargo. The projection of an increased military presence in the Persian Gulf is one result. But those risks can best be minimized by stabilizing the domestic energy industry to encourage a broad-based expansion of energy resources as this provision is intended to do.

Title VI. Formulation of United States Trade Policy

The purpose of this title is to improve the formulation of U.S. international trade policy. The Committee believes that international trade must be raised to a higher level of priority in national policy formulation. Too often executive and legislative actions are taken without regard to their impact on U.S. international trade policy or the ability of U.S. firms to compete in the international economy. By improving coordination between agencies and departments of the Federal Government with responsibility over trade issues and requiring all heads of Federal Government agencies to consider the impact their actions, and legislative actions in areas under their responsibility, have on international trade, the Committee believes the United States can improve its international trade position. The Committee also believes that the development of an adequate information base on factors affecting international trade is important to enhancing the economic performance of the United States. The Committee intends such information to improve both the formulation of international trade policy and the ability of U.S. businesses to export.

TRADE IMPACT STATEMENTS

(Section 601)

There is no provision in current law that requires the U.S. Government to consider the impact of its actions on international trade. Section 601 of the Committee bill requires that, before taking any major action that may affect international trade, the head of each department and agency of the Federal Government study the potential impact such action will have on the international trade of the United States and the ability of U.S. firms to compete in foreign markets, prepare a detailed statement of such study, and make the statement available to the public.

The bill sets out certain exceptions to this general rule. In case of emergency action, the bill provides that the required statement may be published immediately after, rather than before, the actions in taken. In addition, such a study would not be required with respect to actions taken under the Trading With The Enemy Act. Finally, this provision shall not apply to actions that are the subject of a report or consultation required under the Export Administration Act, but such a report or consultation shall include a statement on the impact such action will have on the international trade of the United States and the ability of the United States to compete in foreign markets.

The Committee bill also requires trade impact statements on proposed legislation. Under section 601(b), the head of each department and agency of the Federal Government is required to include with any reports or recommendations made to the Congress regarding proposed legislation a detailed statement of the impact of such legislation on the international trade of the United States and the ability of U.S. firms to compete in foreign markets.

The purpose of this provision is to ensure that the Administration gives full and careful consideration to the impact that executive and legislative actions have on international trade and the ability of the United States to compete in the international economy. The Committee believes such consideration is essential given the serious imbalance in the U.S. trade account.

NATIONAL TRADE COUNCIL

(Section 602)

Current law provides for an interagency trade organization to assist the President in carrying out his functions under the trade agreements program and under sections 201–203 of the Trade Act of 1974. Commonly referred to as the "Trade Policy Committee" or "TPC," the interagency group was established under section 242 of the Trade Expansion Act of 1962 and is composed, in addition to the USTR, of those heads of departments and other officials designated by the President.

The Committee bill amends section 242 of the 1962 Act to eliminate the Trade Policy Committee and establish in the Executive Office of the President the National Trade Council. The Council shall be composed of the President, the Vice President, the USTR, and the Secretaries of State, Treasury, Defense, Agriculture, Commerce and Labor. The Council shall be chaired by the President or, in his absence, the USTR. The USTR shall provide such personnel staff as necessary for the Council's functions.

The functions of the Council include:

(1) advising the President with respect to the integration of national and international policies relating to trade in order to improve cooperation in matters involving international trade;

(2) assessing and appraising the international trade policies and objectives of the United States;

(3) considering policies on matters of common interest to the departments and agencies of the Federal Government concerned with international trade;

(4) considering the relationship between the standard of living in the United States and U.S. international trade policies;

(5) evaluating the effect of U.S. international trade policies and objectives on the national security.

The bill requires each member of the Council, in carrying out the functions of the Council, to consult with committees established to advise that member's department, the advisory committees established under section 135 of the Trade Act of 1974, and other representatives of the private sector. The Council is to make such recommendations and reports to the President as the Council considers appropriate or at the President's request.

The purpose of establishing the National Trade Council is to improve U.S. international trade policy by increasing trade policy coordination in the Federal Government. The Committee is concerned that the formulation of U.S. international trade policies and objectives is not given adequate consideration relative to the formulation of other U.S. policies and objectives. The Committee believes that the formulation of an effective U.S. trade policy depends on improved interagency coordination under the guidance of the agency most knowledgeable regarding international trade matters. Therefore, the Committee bill provides for the USTR to staff the Council and chair the Council, in the President's absence.

NATIONAL TRADE DATA BANK

(Section 603)

There is no provision in current law providing for the coordinated collection of information relating to international trade. Section 603 of the Committee bill establishes a National Trade Data Committee. The Committee shall be chaired by the chairman of the ITC and consist of the USTR, the Commissioners of the ITC, the Director of Central Intelligence, and the Secretaries of Commerce, Agriculture, and State.

Through coordination of the actions of Federal Government agencies, the functions of the Committee shall be:

(1) to establish and maintain a National Trade Data Bank;

(2) to provide for the analysis of information in the Data Bank;

(3) to disseminate such information in a timely manner to export-related businesses; and,

(4) to coordinate the gathering and dissemination of commercial information relating to international trade by the Federal Government.

The bill requires the Committee to submit to Congress each year a report assessing the current state of trade data, describing actions taken or planned to be taken pursuant to this section, recommending executive and legislative actions which would ensure U.S. citizens access to foreign data banks similar to the access that foreign citizens have to the U.S. data bank, and recommending other legislation which would further the purposes of this section.

The National Trade Data Bank provided for under this section is to be designed to utilize advanced data processing equipment to monitor, organize, analyze and disseminate the information gathered and use the most effective means of making the information available to those who could benefit from such information, including U.S. firms and workers. The Data Bank may consist of economic and trade data collected by the Federal Government, including the detailed economic information listed under section 603(b)(2) of the bill and information related to trade in services as described in section 603(b)(4).

The purpose of this provision is to assure that the United States develops, over the next several years, adequate data gathering procedures and data resources to provide a solid foundation for both private and government trade policymaking in the United States in the 1990's. The Committee believes that building a strong base of information on factors affecting international trade is critical to help the United States compete in the international economy and to help the U.S. Government improve its trade policymaking.

Title VII. Authorization of Appropriations for Trade Agencies

AUTHORIZATION OF APPROPRIATIONS TO THE ITC

(Section 701)

Section 330(e)(1) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(1)) requires annual enactment of an authorization of appropriations for the ITC. Section 175 of the Trade Act of 1974 (19 U.S.C. 2232) requires that the estimated expenditures and proposed appropriations of the agency be included in the President's budget without revision. The ITC's appropriation for FY 1987 was $33,900,000.

Section 701 would authorize appropriations of $35,386,000 for FY 1988, as requested by the ITC. This represents an increase of $1.486 million over the FY 1987 appropriation. The increase is entirely attributable to non-discretionary cost increases (increased rental costs associated with the ITC's September 1987 move to a new building, the three percent January 1987 pay raise, and the implementation of the Federal Employee Retirement System).

The ITC's workload, which has grown for the last several years, essentially leveled off in FY 1986, but remains high. The Committee expects that the continuing demand on the agency to conduct trade investigations and to provide technical advice, information, and assistance to the Congress and the Executive (particularly as the GATT Uruguay Round negotiations get underway) justifies a budget sufficient to maintain current operating levels.

AUTHORIZATION OF APPROPRIATIONS TO THE U.S. CUSTOMS SERVICE

(Section 702)

Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) requires annual enactment of an authorization of appropriations to the U.S. Customs Service. The Budget Reconciliation Act of 1986 (P.L. 99–509) amended section 301 to require that, for all years after FY 1987, the authorization of appropriations to the Customs Service shall separately specify the amount authorized for salaries and expenses for commercial operations and the amount authorized for salaries and expenses for all other purposes. The reason for this amendment was to identify those operations to be funded out of the customs user fee account, which is dedicated to salaries and expenses for commercial operations. The Customs Service's appropriation for FY 1987 is $1,019,435,000.

Section 702(a) would authorize an appropriation of $1,035,211,000 for FY 1988. It also:

(1) Requires notification of the Congress by the Customs Service prior to its taking certain specified actions, including a significant reduction in force and closing of any Customs office or port of entry; and

(2) Establishes a customs private sector advisory committee to advise the Secretary of the Treasury on matters relating to the commercial operations of the Customs Service.

Section 702(a) authorizes appropriations for the Customs Service in FY 1988 of $1,035,211,000. This increases by about $145,911,000 the $889,300,000 requested in the President's budget. As required by section 301 of the Customs Procedural Reform and Simplification Act of 1978, as amended by the 1986 Omnibus Budget Reconciliation Act, section 702(a) provides separate authorization of salaries and expenses for commercial operations ($559 million) and for all other purposes ($358 million). The remainder of the total authorized amount ($118 million) is for operations and maintenance of the air interdiction program.

As was the case in previous years, the Administration proposed significant cuts in Customs' manpower in FY 1988. The proposed appropriation level in the President's budget would allow 13,039 staff positions, or nearly 2,000 fewer than that provided for by the FY 1987 authorization and appropriation. The elimination of positions would, according to Customs, be done across the board, except that positions for intelligence employees and employees in the air interdiction program would not be cut. Thus, the cuts would fall disproportionately on other enforcement positions and on positions in commercial operations.

In testimony before the Committee, the Customs Service sought, as it has in previous years, to justify these personnel cuts on the basis of management improvement measures it has taken, particularly in the area of improved automation of commercial operations. These measures are said to have improved productivity to the extent that the personnel positions sought to be cut are not needed.

The Committee agrees that the Customs Service cannot adequately handle its present and anticipated workload without the modernization and streamlining of procedures afforded by automation. According to the Customs Service, it cleared 301.5 million persons entering this country and processed 7.32 million merchandise entries in FY 1986, an increase of 7.3 percent over FY 1985. As recently as FY 1980, the merchandise entry workload was only 4.37 million. In addition, the Service in FY 1986 collected revenues of $14.7 billion, an amount projected to rise to $15.3 billion in FY 1987. On the drug interdiction front, Customs in FY 1986 seized 52,521 pounds of cocaine, 692 pounds of heroin, and 2,211,068 pounds of marijuana. In addition to these growing responsibilities, the Service must enforce some 400 different regulatory statutes on behalf of roughly 40 other Federal agencies. Clearly, Customs has a massive set of tasks to perform, and, to ease this burden, the Committee fully supports all meaningful efforts to make processing of persons and merchandise more speedy and more efficient.

These efficiencies cannot take place overnight, however, and automation is no panacea. The Committee notes that the Customs Service's automated commercial system is still in the implementation phase. It is yet to be introduced at many ports of entry, and many of its projected functions are only partly operational, if at all (for example, the system's automated broker interface function, according to Customs' own testimony, processes only 30 percent of all entries at present, with a goal of 50 percent by calendar year 1988). Moreover, many crucial functions of the Service simply cannot be handled by computers. They cannot inspect cargo, they cannot classify imports for duty purposes, and they cannot fly an airplane for purposes of drug interdiction. To date, there is simply no hard evidence—and the Administration has offered none—that the Customs Service can lose the numbers of personnel the Administration seeks to eliminate and still adequately perform the jobs the Congress has given it.

Testimony before the Committee provides numerous examples of how the Administration's haste to eliminate Customs personnel positions has resulted in diminution of service to the public. Witnesses noted that, because of cuts in the numbers of import specialists, it has become very difficult to obtain line review of an entry by an import specialist in order to obtain assistance on questions of classification and valuation. One witness, a customs broker in Brownsville, Texas, testified that he frequently must travel to Laredo—a distance of 200 miles—just to obtain an interview with an import specialist, because staff reductions in Brownsville had resulted in no one being available at that port of entry.

Still other witnesses complained of excessive delays in Customs' entry review, inspection, and clearance procedures. At hearings in Texas, witnesses particularly noted delays that caused daily backups of traffic on international bridges spanning the U.S.-Mexico border.

Of particular concern to the Committee is Customs' growing failure to seriously review and inspect entries of goods. The Committee recognizes that review and inspection of all, or nearly all, entries is impractical and would lead to unacceptable delays in processing of entries. At present, however, roughly 65 percent of all merchandise entries come into this country without any review of the importer's documentation. Moreover, only two percent of merchandise entries receive even the most cursory physical inspection (a recent General Accounting Office study found that most Customs inspections were rudimentary). In this regard, it is worthwhile to note that the decision whether to conduct an inspection is a function controlled by the automated processing system, and, according to testimony by the Customs Service, a decision by a customs inspector to override the system's instructions requires the approval of a supervisor. This process serves only to deter qualified, experienced personnel from opting to conduct an inspection when their best judgment calls for it. Clearly, without a greater effort to review and inspect entries Customs is not ensuring that importer fraud is not taking place.

An additional problem arising from the failure to inspect adequately is highlighted by the Customs Service's own testimony. Customs stated that, as its tactical drug interdiction capabilities increase, drug smugglers are likely to attempt to enter more of their contraband through established ports of entry. Customs then states that, in order to meet this threat, it has developed automated systems and new ways of processing passengers and cargo. This claim does not match reality, however. The automated system does not inspect people and cargo for drugs. If drug smugglers are in fact turning increasingly to established ports of entry, then inspection of only two percent of entries helps guarantee that they will be successful in their attempts.

Finally, although witnesses stated that in dealing with the Customs Service they have been uniformly impressed by the dedication and professionalism of Customs' employees, as a result of the Administration's cutbacks there has been a definite change in the quality of the personnel. Morale is low, and the core group of experienced, knowledgeable mid-career employees has declined significantly. Witnesses noted that, increasingly, the personnel they deal with are inexperienced or are working outside their areas of expertise.

For these reasons, the Committee concluded that the decreases in spending and personnel for the Customs Service in FY 1988 sought by the Administration are not justified. Section 702(2) instead authorizes appropriations at a level sufficient to continue customs services at a level commensurate with that authorized for FY 1987. Last year, the Congress significantly augmented the budget for the Customs Service, in large part to accomplish the purposes of the Drug Interdiction Enforcement Act (Pub. L. 99-570). Customs has been slow to accomplish the large expansion in hiring required by last year's legislation, and it is difficult as yet to evaluate the performance level that will be achieved by the Customs Service at that funding level. The Committee believes that a year of stability at the FY 1987 level will enable the sort of evaluation needed.

In order to achieve that stability, the Committee expresses its strong encouragement of the Administration to cooperate in providing the Customs Service with the support it requires to carry out its responsibilities. In particular, the Committee is very concerned that the Administration desist from again attempting, as it has with regard to FY 1987 appropriations, to cut the budget of the Customs Service through unilateral deferrals and rescissions of appropriations that run counter to the expressed will of the Congress. The Committee fully shares the aim of reducing the Federal budget deficit, but wholesale cuts in the budget of the Customs Service are penny wise and pound foolish. For every dollar spent on the Customs Service, a revenue-producing agency, it returns far more in revenue.

The Committee notes that, because the 1986 Budget Reconciliation Act, which created the customs merchandise user fee, and the Appropriations Act for FY 1987 proceeded through the Congress at the same time, no appropriation was passed for FY 1987 from the customs user fee account for salaries and expenses related to Customs' commercial operations. The Senate Committee on Appropriations is considering a supplemental appropriation for this purpose. The Committee on Finance strongly recommends that a supplemental appropriation for FY 1987 be passed so as to carry out the intended purpose of the user fee account.

Section 702(b) is intended to ensure that the Customs Service makes no major management initiatives involving cutbacks in personnel, closing of facilities, or diminution of services without sufficient notice to the Congress. It requires the Commissioner of Customs to notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days in advance of taking any action which would result in a significant reduction in force of employees other than by attrition; result in any significant reduction in hours of operation or services rendered at any office of the Customs Service or any port of entry; eliminate or relocate any office of the Customs Service; eliminate any port of entry; or significantly reduce the number of employees assigned to any office of the Customs Service or any port of entry.

In section 702(c) the Committee approved the establishment of a 20-member customs private sector advisory committee. The Committee would advise the Secretary of the Treasury on matters relating to the commercial operations of the Customs Service. It is the view of the Committee that, on the management level, the Customs Service has become increasingly out of touch with those business communities it is meant to serve. The private sector could be a rich source of expertise and knowledgeable suggestions on commercial operations. Institution of an advisory committee would be a structured way of ensuring that interested persons have a way to make their views known. It would provide the Secretary with the information he needs to assure that the Commissioner is providing the high quality of service the Committee intended.

The Secretary would be required to choose the members of the committee from among representatives of those businesses and organizations concerned about commercial operations, and not more than half may be from one political party. The committee would be required to make an annual report to the Committee on Finance and to the Committee on Ways and Means of the House of Representatives. To increase the likelihood that the committee will actually function so as to give meaningful access by the private sector to policymakers in the Department of the Treasury and the Customs Service, the bill provides for a yearly report to the oversight Committees to enable them to review the committee's activities.

AUTHORIZATION OF APPROPRIATIONS TO THE OFFICE OF THE USTR

(Section 703)

Section 141(f) of the Trade Act of 1974 authorized appropriations to the Office of the USTR in such amounts as may be necessary for the purpose of carrying out its functions for FY 1976 through FY 1980. Last year, the Congress amended this section to authorize an appropriation for FY 1987 of $13,300,000.

Section 703 amends section 141(f) of the Trade Act of 1974 to authorize appropriations to the Office of the USTR of $15,248,000 for FY 1988. It further provides that $1 million is to remain available until expended.

The Committee has approved the budget requested for the USTR. The $15,248,000 requested by the Administration for the USTR for FY 1988 is an increase of approximately $1,948,000 over the $13,300,000 authorized for FY 1987. The increase reflects both nondiscretionary cost increases (rent increases and increased personnel costs associated with the January 1987 three percent pay raise and the implementation of the Federal Employee Retirement Plan) and increases for the Uruguay Round GATT multilateral trade negotiations. The increases related to the Uruguay Round include the addition of five new personnel positions, a one-time expenditure for upgrading USTR's computer capacity, and an addition to USTR's representation funding. The agency will be undertaking a complex, sensitive task in the new round of negotiations, and the Committee believes it is important to provide USTR with resources which are reasonably necessary to carry on the preliminary stages of the negotiations, and to prepare the way for full scale negotiations in the event Congress eventually decides to proceed with the negotiation.

The Committee's concern that the budget request might not be adequate to handle the magnitude of the work facing the agency in the upcoming fiscal year was addressed by the Administration's explanation that, in order to provide backup to the USTR for the Uruguay Round, it has also requested approximately $4 million for 72 additional personnel positions in the International Trade Administration of the Department of Commerce for FY 1988.

Of the total authorization, $1 million is authorized as no-year funding. The purpose of allowing a portion of the authorized appropriation to remain available until expended relates to expenditures for USTR's Geneva, Switzerland facilities. Because of fluctuations in the value of the dollar compared to the Swiss franc, USTR cannot safely predict the amount of funding needed for its Geneva operations, and either a shortfall or a surplus may result. The no-year funding will enable USTR to retain surplus funds from a period in which the dollar strengthens in value against the franc, and expend them in a later year in which a shortfall would otherwise result because of a decline in the dollar's value. In earlier testimony before the House and Senate Committees on Appropriations, USTR stated that a $1 million limitation on no-year funding would be sufficient for this purpose.

Title VIII. Tariff Provisions

SUBTITLE A. AMENDMENTS TO THE TARIFF SCHEDULES OF THE UNITED STATES

PART I. PERMANENT CHANGES IN TARIFF TREATMENT

BROADWOVEN FABRICS OF MAN-MADE FIBERS

(Section 802)

The provision would create three new items in the Tariff Schedules of the United States (TSUS) to cover woven fabrics of man-made fibers, other than those containing over 17 percent of wool by weight and those in chief value of glass. These three items would replace current TSUS item 338.50, to allow the creation of additional statistical annotations for such fabrics. Under the single five-digit provision currently applicable to such fabrics, 99 statistical annotations (using combinations of two digits from 01 to 99) are possible. With three tariff items, a total of 297 statistical annotations would be possible.

Man-made fiber broadwoven fabrics are produced in weaving mills and are often the only product manufactured by an individual mill. Approximately 40 percent of the fabrics are sold to apparel plants, with most of the balance used for home furnishings and industrial products.

The purpose of the provision is to establish more provisions for these products so that additional statistical annotations, by type of fabric, could be made available to assist the domestic industry in measuring import competition. The section is also intended to provide additional or transition data to facilitate the possible conversion from the TSUS to the Harmonized System.

The current column 1 rate of duty for TSUS item 338.50 is 17 percent ad valorem. The column 2 duty rate is 81 percent ad valorem, and no preferential LDDC rate is granted. Imports are not eligible for GSP or CBERA and may be subject to quantitative restraints under the MFA.

The quantity of broadwoven fabrics of man-made fibers produced domestically decreased from 12.6 billion square yards in 1980 to 11.85 billion in 1984.

Imports increased from 290 million square yards in 1980 to 659 million in 1984. The leading suppliers in 1984 were Japan (38%), Italy (23%), and Korea (20%).

Consumption remained fairly constant during 1980–1984 averaging 12.3 billion square yards per year.

This provision would have no effect on revenue.

CLASSIFICATION OF NAPHTHA AND MOTOR FUEL BLENDING STOCKS

(Section 803)

Section 803 would make several changes in part 10 of schedule 4 of the TSUS to modify the tariff treatment of some naphthas and create a new tariff item for motor fuel blending stocks. First, it would amend headnote 1 to part 10 to require that motor fuel blending stocks be classified in part 10 whether or not of benzonoid origin. Second, it would add to headnote 2 a new paragraph defining "motor fuel blending stocks" and require verification that they are actually used in manufacturing motor fuels. Third, it would create new TSUS item 475.27 which covers all motor fuel blending stocks which are defined in new paragraph (c) of headnote 2 as "any product (except naphthas provided for in item 475.35) derived from petroleum, shale oil, or natural gas whether or not containing additives which is actually used for direct blending in the manufacture of motor fuel." This item's tariff rate would be identical to those on imported motor fuel.

Finally, it would amend TSUS item 475.30 (covering kerosene derived from petroleum, shale oil, or both (except motor fuel)), to exclude from that item both such fuel and motor fuel blending stocks.

"Motor fuel blending stock" is a term used to refer to a variety of materials derived from petroleum, shale oil, or natural gas, which can be further processed into specification-grade motor fuel. It can also be used to describe materials that can be physically blended with other materials to make motor gasoline.

Motor fuel blending stocks could be used as a fuel in internal combustion or other engines but are outside the American Society of Testing Materials (ASTM) octane range. Generally, these products are mixed or blended with other chemicals, such as tetraethyl lead (TEL), to obtain a higher octane product that meets the ASTM octane specifications for motor fuel.

The provision is designed to correct, an anomaly currently in existence in the TSUS. Under current law, the Customs Service interprets the TSUS to require them to impose higher duties on certain components of motor fuels than on finished motor fuels.

WATCHES AND WATCH COMPONENTS

(Section 804)

This provision amends headnote 4 to schedule 7, part 2E of TSUS, to retain present marking requirements except for the following changes:

Dials would no longer be subject to marking requirements.

A fifth mode of marking—mold-marking—would be added.

The requirement concerning adjustments would be deleted.

The purchase of a particular watch or clock is partly dependent on the reputation of the country of manufacture for quality. Since the consumer rarely inspects watch and clock components, the labeling of internal parts of a timepiece offers no perceptible advantage to the consumer in differentiating quality.

The duty on watches and clocks varies from a fairly straightforward duty on the assembled clock or watch to a duty equal to the sum of duties attributable to case and movements. With only a few minor exceptions these articles are not eligible for benefits under the GSP but are eligible for CBERA treatment unless they contain any material that is the product of a column 2 country. Watches and watch movements produced or manufactured in an insular possession of the U.S. are eligible for duty free treatment if they conform to the quota and other requirements of headnote 6 to schedule 7 which details a rather complex program of preferences enacted in 1982 designed to assist the watch industry in the U.S. Virgin Islands.

The estimated value of U.S. producer's shipments of watches, clocks and components decreased from $996 million in 1980 to $841 in 1984. Quantity data are not available due to the product mix included in the legislation.

U.S. imports of watches, clocks, and components, in terms of value, increased from $1,025 million in 1980 to $1,227 million in 1981. Such imports then dropped to $658 million in 1983 and increased to $887 million in 1984, or by 34 percent. The leading supplier of watches, clocks, and components in 1984 was Japan, accounting for $347 million, or 39 percent of the total. Switzerland and Hong Kong followed with $180 million and $164 million (20 and 19 percent) respectively.

Apparent U.S. consumption rose from $1,954 million in 1980 to $2,094 million in 1981. It then declined to $1,534 million in 1983. Apparent U.S. consumption rose 9 percent in 1984 over that in 1983, to $1,669 million.

There would be no revenue effect of enactment of this legislation.

SLABS OF IRON OR STEEL

(Section 805)

Currently, the TSUS defines iron and steel slabs as having a thickness of not less than 2 inches and not over 6 inches. This section would strike out "and not over 6 inches" from the definition, which is set forth in headnote 3(c), part 2B of schedule 6.

Slabs, along with ingots, billets, blooms, and sheet bars, are the semifinished stock from which finished steel mill products are formed. The slabs are generally processed into such other products as sheets, strip, and plates, which may then be further fabricated into other products such as welded pipes. Slabs are produced by two methods: (1) ingot molding or (2) continuous casting. In ingot molding, molten steel is poured into ingot molds and allowed to cool. When the steel has solidified, the mold is removed, or stripped, from the ingot. Stripped ingots are then generally reheated and rolled into slabs. Continuous casting bypasses the making and reheating of ingots in the production of slabs. In this process, molten steel flows through an open-ended mold that forms the steel into slabs or other semifinished shapes. Continuous-cast slabs are generally regarded as higher quality products than their ingot-molded counterparts.

This section is intended to make the definition of steel slabs in the TSUS consistent with the steel industry's common practice of producing slabs exceeding 6 inches in thickness.

The TSUS defines a slab of iron or steel as a semifinished product of rectangular cross section, having a width of at least 4 times the thickness, not less than 2 inches and not over 6 inches in thickness. Slabs are classified in TSUS items 606.67 and 606.69. Products exceeding 6 inches in thickness, but otherwise meeting the TSUS definition of slab, are classified (a) as "ingots" under TSUS items 606.67 and 606.69, if they have been continuously cast, or (b) as "plates" under TSUS items 607.66, 607.72, 607.76, and 607.78, if they have been rolled from ingots. The bill would change the tariff treatment of these latter products, i.e., "plates" rolled from ingots.

In the case of such carbon steel slabs, the column 1 duties would be reduced from 6 percent ad valorem to 4.2 percent. For stainless steel and tool steel slabs, the column 1 duties would be reduced from 9.5 percent ad valorem to 5.1 percent. For alloy steel slabs other than stainless or tool steel, the column 1 duties would be increased from 3.8 percent to 5.1 percent. None of these products is eligible for GSP benefits; however, duty-free entry is afforded all these products under the CBERA and the U.S.-Israel Free Trade Area Agreement.

While slabs are produced by many domestic steel mills, they have not been a significant article of commerce. They are primarily produced by steel mills for captive consumption in the production of more advanced steel mill products. Separate data on the production of slabs are not available; however, production is estimated to have been 55–60 million short tons per year during 1983–85.

Imports of slabs more than doubled from 908,650 tons ($176 million) in 1984, to over 2 million tons ($358 million) in 1985. The sharpest increase occurred in slabs greater than six inches in thickness, the volume of which more than quadrupled, rising to 1.1 million tons, or 53 percent of total slab imports.

Estimated revenue losses are about $1.8 million per year.

CERTAIN WORK GLOVES

(Section 806)

This section changes the Tariff Schedules of the United States (TSUS) to clarify the definition of textile work gloves. The clarification is necessary because the present Tariff Schedules lack clarity with regard to the proper classification of a certain type of textile work glove. These work gloves are constructed of textile fabric that is coated, filled, impregnated, or laminated, in whole or part, with rubber or plastics. Termed coated fabric work gloves, these gloves have been classified under non-textile as well as textile tariff provisions. This section explicitly defines them as articles of textile materials, thus ensuring they are classified under proper tariff provisions. It will also resolve a difficult classification issue faced by Customs, which has problems determining how these gloves should be classified. In the past, Customs officers have had to make subjective judgments about such classifications, based on, among other things, the visibility of the textile fibers through the coating of the glove when examined under a microscope.

This language has the effect of subjecting certain gloves to higher rates of duty and to quantitative restraints under the MFA. Coated textile work gloves are currently classified in TSUS 705.86 as gloves of rubber or plastics, at a column one rate of 14 percent ad valorem. This provision would reclassify the subject gloves appropriately as gloves of textile material (under such items as 704.40 and 704.45 at a column 1 rate of 25 percent ad valorem).

Coated work gloves are cut and sewn from fabric that has been coated, filled, or impregnated with rubber or plastics. They are used for hand and/or product protection primarily by the industrial sector, including the automobile, steel, construction, and chemical industries. A portion is sold to retailers for use in the home. Approximately 20 to 25 U.S. firms produce coated and partially coated work gloves.

DUTY-FREE IMPORTATION OF HATTERS' FUR

(Section 807)

Section 807 would provide permanent duty-free treatment for hatters' fur now classified in TSUS item 186.20 while removing carroted furskins from the scope of that item. A new item 186.22 would be added to cover carroted furskins which would be dutiable at a column 1 rate of 15% ad valorem and a column 2 rate of 35% ad valorem. Duty-free treatment would be made effective for items retroactive to December 31, 1985 upon proper request filed with Customs.

Hatters' fur is the principal raw material used in the production of fur felt hats. Hatters' fur is cut from the skins of certain animals (chiefly rabbits and hares) after the skins have undergone carroting, a chemical process to improve the felting properties of the fur. Most of the hatters' fur produced in the United States is cut from raw skins which are imported free of duty and then carroted in the United States before the removal of the fur for use as hatters' fur.

These changes are intended to correct an anomaly in the tariff rates of duty whereby imported finished products (fur felt hats) and semifinished products (hat bodies, known in the trade as hoods) are dutiable at a lower rate than the raw material (hatters' fur) used to make the finished and semifinished product.

Imports of hatters' fur under TSUS item 186.20 are dutiable at a column 1 rate of 15 percent ad valorem and a column 2 rate of 35 percent ad valorem. The column 1 rate is suspended through December 31, 1985. Imports are eligible for duty-free entry under GSP and CBERA.

Imports of the raw material from which almost all hatters' fur is made (raw or not dressed rabbit furskins) are free of duty from both column 1 and column 2 countries.

The bulk of the imports of the finished products (fur felt hats) and semifinished products (hoods) which are made from hatters' fur are dutiable at a column 1 rate of $1.51 per dozen plus 2.2 percent ad valorem, and a column 2 rate of $16 per dozen plus 25 percent ad valorem. The ad valorem equivalent was 5 percent for column 1 imports in 1984.

Detailed statistics concerning U.S. production of hatters' fur are not available. Industry sources estimate that U.S. production amounts to less than one million pounds annually. Production, which began declining after World War II, dropped steeply in the 1960's. In recent years, however, the industry has revived somewhat with the increased demand for Western-style hats. Industry sources indicate that the domestic industry has considerable unused and underutilized capacity.

The hatters' fur and fur felt hat industries are characterized by high degrees of concentration and integration. Five firms are believed to account for nearly all of the domestically produced hoods and fur felt hats. These firms, however, have subsidiaries and plants located throughout the United States, with much of the hatters' fur reported to be produced around Newark, New Jersey. Excluding Stratton Hats, Inc., which imports hatters' fur for production of hoods and hats, these firms are believed to account for the great bulk of U.S. production of hatters' fur. Although the firms occasionally sell hatters' fur or hat bodies to each other, most of the production of hatters' fur and hoods is captive production for producing their own fur felt hats.

The five firms together account for almost all U.S. imports of hatters' fur, and for some U.S. imports of fur felt hats.

During 1980–84, U.S. imports of hatters' fur generally declined, ranging from a high of 195,000 pounds, valued at $2.6 million, in 1981 to 26,000 pounds, valued at $226,000, in 1984. France was the principal source for U.S. imports during 1980–84, supplying 62 percent of the quantity and 69 percent of the value of imports in 1984. The remainder of U.S. imports of hatters' fur in 1984 was supplied by Belgium and the Federal Republic of Germany. Imports from column 2 sources were nil in 1984.

Based on import statistics and industry estimates of production, apparent U.S. consumption of hatters' fur amounted to about one million pounds annually in recent years.

It is estimated that the annual loss of customs revenue resulting from enactment of the legislation would approximate $34,000.

EXTRACORPOREAL SHOCK WAVE LITHOTRIPTERS

(Section 808)

This section would reduce the column 1 and column 2 rates of duty on extracorporeal shock wave lithotripters. This would be accomplished by amending the article description for TSUS item

709.15, under which imports of such apparatus are classified as "electro-surgical apparatus, and parts thereof", to "electrosurgical apparatus other than extracorporeal shock wave lithotripters . . .". This amendment would change the TSUS classification of extracorporeal shock wave lithotripters from item 709.15 (column 1 rate of 7.9 percent ad valorem) to TSUS item 709.17 (column 1 rate of 4.2 percent ad valorem) "other electro-medical apparatus, and parts thereof". It would also reduce the column 2 rate of duty from 55 percent ad valorem to 35 percent ad valorem. This legislation provides for lower duty treatment retroactive to December 31, 1982, upon proper request filed with Customs.

The extracorporeal shock wave lithotripter is a sophisticated medical apparatus designed to disintegrate kidney or gall stones without an incision by generating shock waves focused on the area of the patient's body where the stone is located.

The purpose of this section is to remove an anomaly in the TSUS under which extracorporeal shock wave lithotripters are classified as "electro-surgical" apparatus at a duty rate higher than that for other "electro-medical" apparatus. At the same time, the Federal Government, in its Medicare reimbursement procedures, classifies the lithotripter treatment as a "medical" rather than a "surgical" procedure, which results in a substantially lower reimbursement to providers of the treatment than would be the case if it were considered a surgical procedure. This inconsistent treatment for customs tariff and Medicare reimbursement purposes not only puts the provider at a disadvantage, but lessens the availability of the procedure at a reasonable cost to the patient.

Extracorporeal shock wave lithotripters are classified under TSUS item 709.15 as electro-surgical apparatus, and parts thereof, dutiable at 7.9 percent ad valorem under column 1. The column 2 rate is 55 percent ad valorem.

The articles covered by items 709.15 and 709.17 are eligible for duty-free treatment under GSP, CBERA, and the U.S.-Israel Free Trade Area Agreement.

There are four known companies in the United States currently developing extracorporeal shock wave lithotripters. None has yet received pre-market approval by the FDA to market its product in the United States. There has been no U.S. production of extracorporeal shock wave lithotripters, except for investigational use.

In 1985, 50 extracorporeal shock wave lithotripters with a total value of $90 million were imported into the United States. During January-March 1986, 18 additional lithotripters valued at about $32 million were imported.

Based on an estimated $84 million in imports during 1986, it is estimated that the annual revenue loss would be $4,128,000.

SALTED AND DRIED PLUMS

(Section 809)

Section 809 creates a new tariff classification for plums, soaked in brine and dried, with a column 1 and column 2 rate of 2 cents per pound. These plums are currently classified with other prepared or preserved plums, prunes and prunelles with a column 1 rate of 17.5 percent ad valorem and a column 2 rate of 35 percent ad valorem.

Plums are the fruit of a perennial, flowering tree grown in temperate climates throughout the world; in the United States, more than 2,000 varieties of plums, consisting of about a dozen species, have been grown. Most of the important varieties grown commercially are of 2 species: European plums, best suited for drying, and Japanese plums, marketed chiefly as fresh fruit.

Canned plums are generally used as an appetizer, a side dish or a dessert fruit, while frozen plums are used in the manufacture of preserves and baked goods. Plums and prunes in brine are primarily oriental specialty foods.

The proposal is intended to grant a lower duty rate to plums which are first heavily salted by soaking in brine, then dried, and which have a limited market as an oriental delicacy. Because they were first salted, these plums are not classified as "dried" by the Customs Service; however, the rate of duty on dried plums is appropriately applied to this product because it is in essence dried, rather than canned or frozen.

Imported prepared or preserved plums, prunes and prunelles (including plums soaked in brine and then dried) are currently classified in TSUS item 149.28 with a column 1 rate of duty of 17.5 percent ad valorem and a column 2 rate of 35 percent ad valorem. Imported plums are not eligible for GSP but are eligible for CBERA.

According to industry sources, there is no known domestic production of plums that are soaked in brine and dried. Total U.S. production of prepared or preserved (that is, canned and frozen) plums and prunes declined irregularly from an estimated 53.7 million pounds in 1980 to 38.2 million pounds in 1984.

Plums and prunes are produced commercially in nearly every state, with 91 percent of the crop harvested in California in recent years. According to the *Census of Agriculture,* plums and prunes were produced on 140,000 acres on 11,200 farms in 1982, compared with 136,000 acres on 13,100 farms in 1978. In 1982, 3,700 farms in California accounted for 122,400 acres of production. Most of the producers raise other crops in addition to plums.

During 1980–84, total U.S. imports of otherwise prepared or preserved plums rose irregularly from 1.8 million pounds, valued at $2.5 million, in 1980 to 2.5 million pounds, valued at $3.2 million, in 1984. Data are not separately reported for the plums covered by the proposed legislation; however, such imports are believed to be very small. Hong Kong was the leading source of imported prepared or preserved plums in 1984; Taiwan and China were also sources of supply.

Enactment of this legislation would likely have little effect on revenue as imports of plums soaked in brine and then dried are believed to have been minimal.

CERTAIN BENZENOID CHEMICALS

(Section 810)

This provision amends Subpart B of part 1 of schedule 4 of the TSUS to provide for the specific listing of certain benzenoid chemicals with other listed chemicals. The effect of making this change is to lower the effective duty rate on these items. None of these products is produced in the United States. They are, however, used as precursors to various products that are manufactured in the United States. Lowering of the duty rates will benefit manufacturers that use these chemicals in the production of finished products that compete with imports, but have no adverse impact on U.S. chemical producers, who do not produce these items.

TELEVISION APPARATUS AND PARTS

(Section 811)

This section would amend headnote 3(a) to part 5 of Schedule 6 to define the term "complete" when used in reference to a television receiver as a receiver "fully assembled in its cabinet." The current headnote defines complete as "fully assembled."

Next, the bill adds another headnote to part 5 of Schedule 6. It would require that picture tubes imported with other articles are to be classified under the tariff provisions for picture tubes (TSUS item 687.35 through 687.44) unless they are to be incorporated into complete television receivers, word processors or ADP terminals or they are put up in kits containing all parts necessary for assembly into complete television receivers, word processors or ADP terminals. Because of the change in language of headnote 3 from "fully assembled" to "fully assembled in its cabinet," the kit exception would only apply if all parts, including a cabinet, were imported.

The objective of the provision is to prevent importers from taking advantage of an apparent loophole in the TSUS. Japanese picture tubes are sent to Mexico where they are paired up with, but not assembled with, chassis and control panels. The merchandise is then shipped to the United States where it is entered as color television receiver assemblies at a duty rate of 5% ad valorem. The Committee believes that the picture tube portion of the entry should be subject to the 15% duty rate applicable to color television picture tubes.

The section includes three temporary duty suspensions. First, item 912.14 is added to the TSUS to provide for an 11 percent duty, until October 31, 1987, for television picture tubes which would have been included in assemblies (provided for in 684.96) except for the changes made by this section in headnote 4 to part 5 and except for those picture tubes provided for in new items 912.16 or 912.19. Second, item 912.16 is added to the TSUS and provides temporary duty-free treatment, through December 31, 1990, for color picture tubes having a video display diagonal of less than 12 inches. Finally, item 912.19 is added to the TSUS and provides temporary duty-free treatment, through September 30, 1988, for television picture tubes having a video display diagonal of 30 inches and over.

The first suspension is intended to provide a phase-in period for the application of the 15% rate of duty on those picture tubes which Customs had ruled were eligible to be dutiable at 5% as assemblies. The temporary duty suspension for tubes of less than 12 inches is based on the Committee's understanding that these tubes are not produced in the United States. The temporary duty suspension for tubes of 30 inches or more is based on the Committee's understanding that there are no facilities for manufacturing these products currently in existence in the United States, and that it would take a minimum of 18 months to establish such facilities.

This provision establishes an exception to the normal rule set forth in General Interpretative Rule 10(h) of the TSUS that a tariff description for an article covers such article whether assembled or not assembled, whether finished or not finished. For this reason, the Committee intends that the coverage of this provision be narrowly construed and has endeavored to exclude, through duty suspensions, tubes not currently being manufactured domestically.

CRT's are used in a variety of products including television receivers, monitors for television studios, monitors for security systems, certain types of data display terminals for automatic data processing uses, video games, oscilloscopes, and terminals for word processing applications. Television picture tubes are a type of CRT.

Color television picture tubes are classified under TSUS item 687.35, dutiable at a column 1 rate of 15% ad valorem and a column 2 rate of 60% ad valorem. Imports are not eligible for GSP but are eligible for CBERA.

Color assemblies (including kits containing all parts necessary for assembly into complete receivers) are classified under TSUS item 684.96, dutiable at a column 1 rate of 5% ad valorem and a column 2 rate of 35% ad volorem. Imports are not eligible for GSP but may qualify for duty-free treatment under CBERA.

The effect of this provision on revenue would depend upon the dutiable value of the picture tube portion of the merchandise. If we assume that one-half of the value of each color television kit imported in 1984 was attributable to the tube, the estimated revenue increase from the duty increase on the tube from 5% to 15% would be approximately $2.9 million.

PART II. TEMPORARY CHANGES IN TARIFF TREATMENT

COLOR COUPLERS AND COUPLER INTERMEDIATES

(Section 821)

This provision would amend items 907.10 and 907.12 of the Appendix to the TSUS to continue through December 31, 1990 the suspension of the column 1 rate of duty on photographic coupler intermediates provided for in item 907.10, an actual use provision; and on photographic color couplers provided for in item 907.12. The column 2 rate of duty would remain unchanged. The description of item 907.10 is amended to exclude from suspension the color coupler commonly referred to as C-1. This provision provides for duty-free treatment retroactive to September 30, 1985, upon proper request filed with Customs.

Coupler intermediates are organic chemical compounds that are used in the production of color couplers. A color coupler is a more advanced organic compound that is incorporated in photographically sensitized material and reacts chemically with oxidized color developers to form a dye. Color couplers are used to make color photographic paper, film and graphic arts materials.

The provision would enable the Eastman Kodak Co., a domestic firm, to continue to import duty-free for a temporary period certain color couplers and coupler intermediates that it does not make and that cannot be obtained domestically. Continuing the duty suspension would help keep its products (i.e., photographic color paper) competitive in U.S. and world markets. Eastman Kodak produces some color couplers and coupler intermediates for captive use; however, since its plants cannot meet all of its requirements, the company must import selected products.

The majority of imported coupler intermediates are currently classifiable in items 403.59, 404.90, and 406.42. Color couplers are classified in item 408.41, photographic chemicals. The column 1 duty rates vary from 8.5 percent ad valorem to 13.5 percent ad valorem. The column 2 rates vary from 7 cents per pound plus 50 percent ad valorem to 7 cents per pound plus 62 percent ad valorem.

Color couplers are eligible for duty-free treatment under the GSP but coupler intermediates are not. Both are eligible for duty-free treatment under the CBERA.

Data on domestic production is not available as it would reveal business confidential information.

Eastman Kodak is the principal domestic producer of coupler intermediates and color couplers, and its total production is for captive use in the production of photographic color paper.

Formerly, the 3M Co. produced photographic color paper, color couplers and intermediates in the United States, but also imported intermediates and color couplers from its Italian and English subsidiaries. 3M had been producing color couplers in the United States from imported coupler intermediates to reduce its requirements for imported color couplers.

In 1982 it requested the introduction in Congress of the bill (S. 2889) that resulted in the suspension of duties on color couplers and coupler intermediates. According to industry analysts, despite the duty suspension, 3M found it increasingly difficult to produce these products profitably in the United States and in 1984 ceased domestic production.

Import statistics on coupler intermediates and color couplers are not separately maintained. Eastman Kodak reported that in 1983 it imported approximately 155,000 pounds of these products, mostly from Japan and Western Europe. Because color couplers and intermediates are continually changing, Kodak could not predict its future imports exactly. It estimates, however, that imports of these products will increase by approximately 10 percent per year during the next few years.

Based on 1983 import data obtained from Eastman Kodak, the potential loss of revenue resulting from enactment of this provision would probably be about $110,000 per year.

POTASSIUM 4-SULFOBENZOATE

(Section 822)

This section would suspend through December 31, 1990 the column 1 rate of duty for p-sulfobenzoic acid, potassium salt (potassium 4-sulfobenzoate). Column 2 would remain unchanged.

P-sulfobenzoic acid is used as an intermediate in the manufacture of probenecid which is a diuretic.

As one of two U.S. manufacturers of the drug probenecid, Salsbury Laboratories will use imported p-sulfobenzoic acid exclusively to produce probenecid. A company official states that by eliminating the duty on the subject chemical, U.S. manufactures of probenecid will then be able to compete in the end-product market with low-cost imported probenecid. Approximately 26 percent of the U.S. apparent consumption of probenecid was accounted for by imports in 1983.

This chemical is classified in item 404.28 of the TSUS. The column 1 rate of duty of p-sulfobenzoic acid is presently 1.7 cents per pound plus 17.9 percent *ad valorem*. The column 2 rate of duty is 7 cents per pound plus 57 percent ad valorem. It is not eligible for GSP but is eligible for CBERA.

The chemical p-sulfobenzoic acid, potassium salt is not produced in the United States. Use of this chemical by Salsbury Laboratories, Inc. as an intermediate in production of probenecid began in 1983.

No records exist to show either the quantity or value of imports of this chemical during 1980–85. An industry source estimates that approximately 7,300 pounds, valued at about $26,000, were imported in 1984. The same source estimates 1985 imports to be about 9,100 pounds, valued around $32,000.

Annual revenue losses are expected to be $15,000.

2,2'-OXAMIDOBIS[ETHYL 3-(3,5-DI-TERT-BUTYL-4-HYDROXYPHENYL) PROPIONATE]

(Section 823)

The provision would temporarily suspend the column 1 rate of duty on imports of 2,2'-oxamidobis-[ethyl 3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionate], classified in item 405.34 of the TSUS through December 31, 1990. The column 2 rate of duty would remain unchanged.

The subject chemical is a synthetic organic chemical used by industrial processors and fabricators as a high-performance antioxidant and metal deactivator in various polymers, such as polypropylene, polyethylene, and polystyrene.

Although other antioxidants are used in polymer applications, this chemical meets specifications in specific applications not served by any other antioxidant currently produced in the United States.

The temporary duty suspension is intended to permit Uniroyal, which is the major U.S. importer, to supply this chemical to its customers in a cost-efficient manner. It is not currently produced in the United States. The Uniroyal Chemical Division of Uniroyal, Inc. has indicated it cannot produce the chemical domestically without diverting fully utilized production capacity and facilities from the manufacture of other chemicals.

This chemical is classified in item 405.34 of the TSUS. The column 1 rate of duty is 13.5 percent ad valorem, and no preferential duty rate is afforded to imports from LDDC's. The column 2 rate of duty is 7 cents per pound plus 58 percent ad valorem. Imports of this chemical are not eligible for duty-free entry under GSP. However, imports are eligible for CBERA.

If the estimated import and price levels of 1984 remain unchanged, the potential annual customs revenue loss would be approximately $50,000.

2,4-DICHLORO-5-SULFAMOYLBENZOIC ACID

(Section 824)

Section 824 would add item 906.48 to the TSUS to temporarily suspend the column 1 rate of duty on 2,4-dichloro-5-sulfamoylbenzoic acid (lasamid). The column 2 would remain unchanged. The duty suspension would be effective through December 31, 1990.

Lasamid is an intermediate chemical used to produce the drug furosemide. Lasamid is an odorless, white crystalline powder soluble in acetone, alcohol, and weak caustic solutions. As of 1985 only one U.S. pharmaceutical firm manufactured furosemide domestically and this same firm consumes about 95 percent of total imports of lasamid. Duty suspension would enable the company to be more competitive with imported furosemide.

Lasamid is currently classified in TSUS item 406.56 at a column 1 duty rate of 1.7 cents per pound plus 18 percent ad valorem. The column 2 rate is 7 cents per pound plus 57.5 percent ad valorem. Lasamid is not eligible for GSP benefits but does not qualify for duty-free entry under the CBERA.

There is only one significant importer of lasamid and imports have ranged from 48,766 to 121,915 pounds over the past five years. In 1984 imports were 40,590 pounds. Lasamid costs approximately $10 per pound.

Estimated revenue losses in 1987 are $198,000, and in 1988, $206,000.

DERIVATIVES OF N-[4-(2-HYDROXY-3-PHENOXYPROPOXY)-PHENYL]ACETAMIDE

(Section 825)

This provision would add new item 907.11 to the Appendix to the Tariff Schedules of the United States (TSUS) in order to suspend the column 1 rate of duty on derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)phenyl]acetamide through December 31, 1990.

The subject product is a fortifier for epoxy resins that is capable of improving the strength and elasticity of the resin while avoiding brittleness. The subject product is not currently produced in the United States. The epoxy resins and articles of plastics that are capable of being improved by the fortifier are produced in the United States. Import duties on the fortifier increase the cost of the fortifier to domestic epoxy resin manufacturers.

The fortifier for epoxy resins is classified in TSUS item 407.19, covering other mixtures in whole or in part of any of the product provided for in subpart 1B of Schedule 4 of the TSUS (benzenoid industrial organic chemicals). The column 1 duty rate of the fortifier is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material; the column 2 rate of duty is 7 cents per pound plus 43.5 percent ad valorem, but not less than the highest rate applicable to any component material. The fortifier is eligible for duty-free entry under CBERA and GSP (unless it is imported from Mexico or Romania).

If the active ingredient of the fortifier were imported in a form that is 95 percent or more pure, the active ingredient would be classified under TSUS item 405.34. The column 1 rate of duty of 13.5 percent ad valorem under this tariff item would not apply to the mixture since it is lower than the column 1 rate of duty for TSUS item 407.19. The column 2 rate of duty under item 405.34, 7 cents per pound plus 58 percent ad valorem, would apply to the mixture if it were the highest rate applicable to any component material.

There is no domestic production.

Separate import data for the fortifier are not available, since this mixture is one of many articles classified as "other benzenoid chemical mixtures." Since this product was patented in 1984, it is unlikely that there were any imports in commercial quantities. The only known source of this mixture is Canada. No imports were supplied by column 2 sources. The importer of this chemical is Uniroyal, Inc.; the firm has projected a growing U.S. market for this product.

If the import quantities and price levels projected for 1985–87 are realized, the potential annual loss of customs revenue would amount to an annual loss of revenue of approximately $157,000. The quantity of imports of the fortifier is expected to increase significantly because of the improved strength and reduced brittleness that it imparts to epoxy resins.

CERTAIN KNITWEAR FABRICATED IN GUAM

(Section 826)

Section 826 suspends the duty on sweaters from Guam assembled by U.S. citizens, nationals, or resident aliens from preshaped parts within the guidelines of headnote 3(a) and within quota levels through October 31, 1992. This section is intended to apply solely to sweaters imported from Guam. Notwithstanding section 603(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, it would not create new benefits or requirements for articles imported from the Northern Mariana Islands. It is the Committee's specific intention that products imported into the customs territory of the United States from the insular possessions shall continue to enter under General Headnote 3(a) of the Tariff Schedules of the United States. This section applies to articles entered after October 31, 1985.

The articles in this legislation are full-fashioned sweaters, items of knit outerwear covering the body but not extending below mid-thigh. Full-fashioning is a method of construction in which the sweater parts are made to conform to the contours of the human body. The preshaped parts are then joined by a process known as looping or by sewing.

The purpose of the section is to reinstate existing practice with respect to country of origin determinations for duty assessment purposes for knit to shape apparel imported into the U.S. from Guam. The existing country of origin determination allows products to be considered products of insular possessions (general headnote 3(a)(i) if they do not contain foreign materials amounting to more than 70 percent of their total value. Sweater imports from Guam and the Commonwealth of Northern Mariana Islands (CNMI) have been able to benefit from this provision in the past.

Customs has recently, however, issued new final rules of origin for textiles which state that "trimming, and/or joining together by sewing, looping, linking, or otherwise completed knit-to-shape component parts produced in a single country . . . . do not constitute a substantial transformation; therefore, a sweater completed by such a process is a product of the country of origin of the component part."

The interagency Committee for the Implementation of Textile Agreement (CITA) has established special quota exemptions for Guam and CNMI. However, the governments of these two insular possessions have protested that the quantities are too small and, combined with the imposition of duties, will result in severe economic hardship.

This section addresses only the tariff, not the quota.

During 1984, the average rate of duty paid on sweaters was 27 percent ad valorem; the actual MFN rates ranged from 5 percent to 38.8 percent ad valorem. On February 27, 1985, CITA provided for special MFA quota exemptions for exports of sweaters from Guam and CNMI between November 1, 1984 and October 31, 1985. Exempted from quotas were 160,000 dozen sweaters of cotton, wool or man made fibers assembled in Guam and 70,000 dozen sweaters assembled in CNMI. Sweaters exceeding these limits are charged against the quota of the country of origin, usually where the parts were knit.

Imports from Guam and the CNMI, which together accounted for approximately one percent of all sweater imports in 1984, increased significantly from 1982 to 1984. In 1982, the first year of production, Guam exported 33,000 dozen sweaters, valued at $2.7 million. By 1984, shipments of sweaters from Guam had increased 245 percent to 114,000 dozen, valued at $10 million. Production of sweaters in the CNMI began in 1984, when exports to the United States totaled 40,000 dozen, valued at $5 million.

No change in revenue effect is expected as currently these sweaters are entering the U.S. duty free.

3,5-DINITRO-O-TOLUAMIDE

(Section 827)

Section 827 would temporarily suspend the column 1 duty on 3,5-dinitro-o-toluamide (TSUS 411.93). Column 2 would remain unchanged. The suspension would be through December 31, 1990.

The chemical, 3,5-dinitro-o-toluamide (commonly known as zoalene), is a bacteriostat that is used specifically as an additive to animal feeds to inhibit or delay the development of animal coccidiosis, a disease caused by protozoan parasites. The disease primarily affects domestic animals and birds and only occasionally affects man and horses.

Salsbury Laboratories is the only domestic producer of zoalene. Demand for the product is confined to a small segment of the overall market for coccidiostats. As such, the firm is of the opinion that it might prove to be more economical and competitive to import the product as needed, rather than maintain domestic production. The possible suspension of the duty may be a significant factor influencing their decision.

The column 1 duty rate for zoalene is 8.1 percent ad valorem and the column 2 duty rate is 7 cents per pound plus 67.5 percent ad valorem. Zoalene is not eligible for duty free treatment under the GSP but is eligible for CBERA duty free treatment.

Since there is only one domestic producer of this product, production data cannot be published because they would reveal confidential business information.

Zoalene accounts for less than a 10 percent market share among coccidiostats. The overall U.S. market for coccidiostats is estimated to amount to about $75 million to $100 million annually. There are at least three other such drugs that are more commonly used and together hold approximately 70 to 90 percent of the market, according to industry sources. They could, conceivably, be substituted in place of zoalene. In general, however, the use of a particular coccidiostat in a given situation is determined by the species of coccidia involved and/or on whether the chemical agent is approved for use in the particular species and/or class of species needing treatment. Each of the coccidiostats has its own range of effectiveness. Thus, although some are used more commonly than others and may be able to be substituted for one presently in use, they do not necessarily cover the same scope in terms of species.

Import data are unavailable because this product is classified in a residual or "basket" TSUS category. According to an industry source, however, there have been no imports of zoalene in the last five years. The major sources for this product are Israel and Spain. An industry source has quoted an approximate market price of $2.00–$5.00 c.i.f. per pound for this product, using the current market price from Spain as an example.

Revenue losses are estimated to be $14,000 annually.

SECONDARY BUTYL CHLORIDE

(Section 828)

This section would add item 907.55 to the appendix to the Tariff Schedules of the United States (TSUS) to provide for a suspension of the column 1 rate of duty for secondary butyl chloride through December 31, 1990. The column 2 rate of duty would not be changed.

The primary use of secondary butyl chloride is in the production of sec-butyllithium, a powerful chemical base and alkylating agent. Sec-butyllithium is in turn used by pharmaceutical and specialty chemical firms in the production of high-value-added chemicals.

Secondary butyl chloride is not currently produced in the United States, nor is it likely to be in the near future because of the extensive capital investment required, the corrosive materials used in the process, and the risks the producers must take. Downstream products of secondary butyl chloride, notably sec-butyllithium, are produced in the United States, and the suspension of import duties on secondary butyl chloride would allow domestic firms to compete more effectively with foreign producers of downstream products.

Secondary butyl chloride is classified under TSUS item 429.47, which has a column 1 rate of duty of 18 percent ad valorem, and a column 2 rate of 114.5 percent. Imports from eligible countries may qualify for the GSP and imports from beneficiary Caribbean countries may be eligible for duty free treatment under the CBERA.

Imports of secondary butyl chloride are estimated to have remained at a level of about 400,000 pounds, valued at about $500,000, since 1980.

The only two known importers of secondary butyl chloride are Lithium Corporation of America, located in Bessemer City, NC, and Foote Mineral and Chemicals, located in Johnsonville, TN. Both use secondary butyl chloride in the production of sec-butyllithium and purchase from the only known foreign producer, Deutsche Texaco AG Chemie of West Germany.

Assuming the import quantities and price levels of 1984 remain unchanged, the potential annual loss would amount to $9,000. Import quantities are not expected to increase significantly because of limited demand for the downstream chemical products.

CERTAIN NONBENZENOID VINYL ACETATE-VINYL CHLORIDE-ETHYLENE TERPOLYMERS

(Section 829)

Section 829 would suspend the column 1 rate of duty on imports of nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate, through December 31, 1990.

Vinyl acetate-vinyl choloride-ethylene terpolymer is a graft polymer and is used mainly in the manufacture of protective sheathing for fiber optic telecommunications cable. Small quantities of the terpolymer are also used as impact modifiers in the manufacture of rigid plastic profile forms for the construction market.

The terpolymer covered by this legislation is not now produced domestically and reportedly has no directly competitive domestic counterpart in the fiber optics sheathing market. The terpolymer is known to be imported by two U.S. firms at present.

Pantasote, Inc. uses imported graft polymers to manufacture a patented plastic compound used to manufacture protective sheathing for fiber optic cable. It is the sole supplier of this patented material which it sells to a leading U.S. telecommunications company. The purpose of the proposed duty suspension is to enable Pantasote to continue to profitably manufacture this product, and to enable the telecommunications company to produce fiber optics competitively. No other U.S. company is producing these graft polymers.

Vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate, is classified under TSUS item 445.48, which provide for other vinyl resins. Item 445.48 has a column 1 duty rate of 5.3 percent ad valorem and a column 2 rate of 43.5 percent. It qualifies for GSP and CBERA duty free treatment.

There has been no domestic production since 1984 when the sole U.S. producer, Pantasote, decided to go offshore to fulfill its needs for the product.

Official import statistics for the terpolymers covered by this legislation are not available. Imports of this product come from a firm in West Germany that is reportedly the only source producing a terpolymer with the properties necessary to meet the strict standards of the fiber optics industry. Pantasote, Inc. is the principal importer of the product. It began importing this material at the end of 1984 and projects that imports will be less than 5 million pounds in 1985, and will be less than 10 million pounds by 1989. Prior to 1984, imports of this terpolymer were negligible.

Based on projected imports, annual revenue loss is estimated to be from $196,000 to $419,000 depending on how much of each type of the product is imported.

DUTY-FREE ENTRY OF PERSONAL EFFECTS AND EQUIPMENT OF PARTICIPANTS AND OFFICIALS INVOLVED IN THE TENTH PAN AMERICAN GAMES

(Section 830)

Section 830 would add a new temporary provision to the Appendix to the TSUS to grant duty-free entry into the United States for the personal effects, equipment, and other articles of foreign participants coming to Indianapolis, Indiana in 1987 for the Tenth Pan American Games. Similar duty treatment would also be provided to articles entered by officials for the Games, accredited members of delegations, immediate family members of any of the above, and any servants to such persons. The duty suspension would be administered under the terms of regulations promulgated by the Secretary of the Treasury and would continue through September 30, 1987. The new tariff item would provide for retroactive duty-free treatment for articles entered after May 31, 1986, upon proper request filed with Customs.

The provision is similar to a previously enacted provision which granted temporary duty-free entry to articles brought to the United States for use during the Los Angeles Olympic games held in 1984. Specifically, it would utilize the same article description (other than the different reference to the title of the Games) as was employed in prior TSUS item 915.00, which expired on September 30, 1984. The duty suspension is conditional that the articles are required to be consumed, destroyed or exported and not to be sold commercially in the United States. The Secretary of the Treasury is empowered to issue regulations concerning the scope and operation of this item 915.10.

With the duty suspension provision, persons eligible to use it would not be compelled to obtain a temporary importation bond for the amount of customs duties otherwise applicable, then wait for a duty refund following proof that the articles had been exported from the United States.

There would be no effect on revenue.

CARDING AND SPINNING MACHINES

(Section 831)

This provision would amend the Tariff Schedules of the United States (TSUS) to suspend the existing column 1 rate of duty through December 31, 1990 on spinning, twisting, doubling, and other machines specially designed for wool. The column 2 rate of duty would remain unchanged. The provision would also cover machines used to prepare for spinning wool intended for specified applications. Machines for making combed wool (worsted) yarn would be excluded.

Spinning machines are used to reduce the roving (soft strand of loosely assembled fibers made from sliver for spinning into yarn) to the required fineness, and to twist and then wind the yarn onto a cap, bobbin, or paper tube.

Doubling machines simply take two, three, four or more single strands of sliver (untwisted continuous strand of fibers resulting from the carding process) or yarn and wind them onto one cone. The purpose of this operation is to increase the uniformity of the strand which is ultimately to be transformed into finished yarn.

Spinning, twisting, doubling, and other machines specially designed for wool are provided for in TSUS item 670.04. This provision includes all machines used to produce yarns from wool; however, the Customs National Import Specialist indicates that identifying machines which are "specially designed" can be difficult. Since the majority of machines are capable of processing wool, cotton, and synthetics, it is not possible to differentiate based on fiber type. Few of these machines are manufactured or designed solely to produce wool, according to industry officials. The column 1 rate of duty is 4.7 percent ad valorem and the column 2 rate is 40 percent. Imports are eligible for GSP and CBERA.

The quantity of imports increased irregularly from 262 units valued at $398,000 in 1980 to 391 units valued at $2,151,000 in 1984. In 1984, the principal sources of U.S. imports of these machines were West Germany (accounting for 37 percent of total imports), France (accounting for 36 percent of total imports), and Belgium (representing 22 percent of total imports).

Based on 1984 import levels, annual revenue loss would average approximately $104,000 during 1987–88.

DICOFOL; DINOCAP; AND CERTAIN MIXTURES

(Section 832)

Sections 832 (a) and (b) would temporarily suspend the duty on 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol), and certain mixtures of dicofol and application adjuvants through December 31, 1990. This legislation would provide for duty-free treatment retroactive to September 30, 1985 upon proper request filed with Customs.

Dicofol is a synthetically produced chlorinated insecticide (more specifically, a miticide). It is currently being used on cotton, citrus fruits, field corn, beans, and approximately 60 other types of crops for the control of various species of mites. Other domestically produced miticides are also used to control mites on certain crops; however, dicofol has the largest number of registered crop uses compared with other miticides. In many instances, dicofol is the only registered miticide available.

Dicofol is classified in TSUS item 408.28, covering other insecticides. Articles covered by this item are dutiable at a column 1 rate of 12.5 percent ad valorem and a column 2 rate of 7 cents per pounds plus 64.5 percent ad valorem.

TSUS item 907.15, which had provided for a temporary duty reduction of 6.9 percent ad valorem, expired on September 30, 1985.

Dicofol, as an article classified in TSUS 408.28, is eligible for GSP and CBERA.

There is no domestic production.

According to industry sources, U.S. imports of Dicofol in 1984 amounted to approximately 2.6 million pounds, valued at $5.9 million. The majority of these imports came from Italy. U.S. imports of Dicofol from the other foreign source in 1984, from Makhteshim-Agan in Israel, entered free of duty under the GSP. The exact quantity of GSP imports in 1984 is not available, since other chemicals are classified in the same tariff item.

Based on 1984 import levels, annual revenue loss is estimated to be $600,000 during 1987-1990.

Subsection (b) would suspend the column 1 (MFN) duty on mixtures of dicofol and application adjuvants through Dec. 31, 1990. The column 2 duty is not affected by the bill. The technical grade (active ingredient) dicofol already is subject to a duty suspension. Continuation of that suspension is covered by separate legislation.

Mixtures of dicofol and application adjuvants currently enter the United States under TSUS item 408.36 at a MFN duty of 0.8 cents per pound plus 9.7 percent ad valorem. Imports under TSUS item 408.36 are eligible for duty-free treatment under the GSP. This provision would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.27 with duty-free entry for articles entitled to MFN treatment commencing on or after the fifteenth day after date of enactment and ending on or before December 31, 1990. The column 2 rate of duty would remain unchanged.

Dicofol is not produced in the United States. It is imported both as a technical grade (active ingredient) and as mixtures of the technical grade and application adjuvants. Dicofol is a chlorinated hydrocarbon developed specifically as a broad spectrum miticide. There are no other uses. After entry into the United States, the technical grade and the mixtures are further processed or formulated to produce a variety of miticide products.

Because the subject products enter in a basket category, determination of the revenue effect is not possible. It is estimated that revenue foregone would be approximately $85,000 per year for the period 1986 through 1990.

Subsection (c) of this section would suspend the column 1 rates of duty for dinocap and mixtures of dinocap with application adjuvants classified under items 408.16 and 408.38 of the Tariff Schedules of the United States (TSUS) until Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

Dinocap is a fungicide-miticide used to control powdery mildew and mites, primarily on apples and other tree crops, vine crops, curcubits, and onamentals. It is imported as both the technical grade and as a finished product containing application adjuvants. There are other U.S.-produced fungicides and other U.S.-produced miticides; however, there are few, if any, pesticides that are effective in both of these areas.

Dinocap is presently classified under item 408.16, fungicides, not artificially mixed. Articles entered under this item number are presently dutiable at a column 1 rate of 11.1 percent ad valorem and a column 2 rate of 7 cents per pound plus 40 percent ad valorem.

Mixtures of dinocap with application adjuvants are currently classified under item 408.38, other pesticides. The column 1 rate and LDDC rate are currently 0.8 cents per pound plus 9.7 percent ad valorem, while the column 2 rate is 7 cents per pound plus 31 percent ad valorem. The column 1 rate was not subject to annual staged reductions as a result of the Trade Agreements Act of 1979. Prior to the enactment of this Act, these products were classified in item 405.15, with a column 1 rate of 1.7 cents per pound plus 12.5 percent ad valorem. Articles classified in either item 408.16 or item 408.38 are eligible for duty-free treatment under the CBERA, the GSP, and the United States-Israel Free Trade Area Implementation Act of 1985.

During 1981–84, dinocap and its preparations were produced in the United States by Rohm and Haas, at its plant in Philadelphia, Pennsylvania. In 1985, Rohm and Haas stopped production of dinocap, but continued to manufacture the preparations using imported material.

According to an industry source, U.S. imports of these products in 1985 amounted to approximately 276,000 pounds, valued at $1.2 million. All of these imports came from Italy and were shipped to Rohm and Haas. There were no imports from any other sources.

Based on data provided by an industry source, the estimated annual revenue loss during 1986–90 would be approximately $10,000.

NICOTINE RESINS

(Section 833)

The Trade and Tariff Act of 1984 provided for a temporary duty suspension for nicotine resin complex in the form of chewing gum pieces. The intent of the provision was to allow duty-free entry of a trademarked substance known as *Nicorette,* imported by Merrell Dow Pharmaceuticals, Inc. Subsequent classification interpretations by the Customs Service since the duty suspension was enacted have negated the intent to provide duty-free treatment for *Nicorette.*

The first part of this amendment clarifies the definition of nicotine resin complex so as to include "measured doses in chewing gum form (provided for in item 438.02, part 3B, Schedule 4). Thus, *Nicorette* would be covered by this duty-free classification as originally intended by Congress.

The second part of this amendment extends the current duty suspension through December 31, 1990 and applies to articles entered after December 31, 1987. The patent on this item applies through 1992, so the extension of this suspension would not negatively impact any manufacturer.

This provision would be made retroactive to November 14, 1984, upon proper application therefor with the U.S. Customs Service.

SILK YARN

(Section 834)

This section would suspend the column 1 rate of duty on certain types of silk yarn.

This provision would affect colored, plied 100 percent silk yarn spun wholly from noncontinuous fibers, entering under TSUS item 308.51.

Most of the continuous filament yarn produced in this country or imported is used in the production of woven silk fabric, much of which is used for the manufacture of silk neckties.

The purpose of this provision is to assist U.S. manufacturers of silk fabric to compete with imports of silk fabric from Italy and other European countries by removing the tariff on the silk yarn used in producing the fabric.

The column 1 and column 2 rates of duty applicable to imports of the subject yarn are 5 percent ad valorem and 50 percent ad valorem, respectively. Yarn of 100 percent silk is not subject to restraints under the MFA. It enters duty-free from Israel, and is eligible for duty-free entry under the GSP and the CBERA.

There are no domestic companies known to be producing 100 percent spun silk yarn. There are believed to be 7 companies producing continuous filament silk yarn. Industry sources estimate that 1985 production of the latter product amounted to 430,000 pounds, valued at $8.4 million.

Imports of silk yarn under TSUS item 308.51 jumped from $209,000 in 1981 to $1.4 million in 1983, but then declined to $740,000 by 1985.

The estimated revenue losses would be approximately $37,000 per year.

TERFENADONE

(Section 835)

This section would suspend through December 31, 1990 the column 1 rate of duty on imports of 1-(4-(1,1-dimethylethyl)phenyl)-4-(hydroxydiphenylmethyl-1-piperidinyl)-1-butanone (also known as terfenadone) classified in TSUS item 406.42. The column 2 rate of duty would remain unchanged.

Terfenadone is a patented intermediate chemical used in the manufacture of terfenadine, a nonsedating antihistamine. The latter chemical is a patented prescription drug sold under the trademark Seldane by Merrell Dow Pharmaceuticals, Inc.

The temporary suspension of duty would reduce the cost of importing terfenadone, thereby allowing increased utilization of existing domestic manufacturing facilities producing terfenadone and Seldane and providing new jobs at Merrell Dow's facilities in Cincinnati, Ohio. Merrell Dow intends to export approximately one-third of the terfenadine manufactured from the imported terfenadone over the next 3 years.

Terfenadone is classified in TSUS item 406.42 (other heterocyclic compounds and their derivatives) with a column 1 rate of 13.5 percent ad valorem. The column 2 rate of duty is 7 cents per pound plus 52 percent ad valorem. Imports of terfenadone are not eligible for duty-free treatment under the GSP; however, they are eligible for duty-free treatment under CBERA and under the United States-Israel Free Trade Area Implementation Act of 1985.

There was no U.S. production of terfenadone in the past five years. Terfenadone is currently under U.S. patent to Dow Chemical Company, the only U.S. importer of this product.

Separate import data are not available for terfenadone, but industry sources estimate that 1985 imports amounted to approximately 24,000 pounds, valued at about $3 million.

Based on industry trade estimates, expected revenue losses would amount to $729,000 in 1987, and $1.46 million in subsequent years.

FLUAZIFOP-P-BUTYL

(Section 836)

This section suspends, through December 31, 1990, the column 1 rate of duty on a chemical commonly known as fluazifop-p-butyl.

Also called Butyl (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]-phenoxyl] propanoate, this chemical is produced synthetically by a series of proprietary chemical reactions using benzenoid chemicals as starting materials. It is used in various herbicide formulations to control grassy weeds.

According to industry sources, fluazifop-p-butyl is currently produced solely in England; the concentrate is imported into the United States and formulated for commercial sale. Suspending import duties on this herbicide could lower the cost of the finished product to consumers. Further, because this herbicide is used primarily in cotton and soybean farming, a suspension of duties could reduce the U.S. farmers' costs and make them more competitive in the world market for soybeans.

Fluazifop-p-butyl is currently classified in TSUS item 408.23, with column 1 rate of duty of 13.5 percent ad valorem and a column 2 duty rate of 7 cents per pound plus 48.5 percent ad valorem. Imports of this herbicide are eligible for duty-free entry under the GSP, CBERA, and the U.S.-Israel Free Trade Agreement.

Annual imports of this herbicide are estimated to be about 2.0 million pounds, valued at about $28.0 million.

The estimated revenue losses would amount to about $1 million per year.

PARTS OF INDIRECT PROCESS ELECTROSTATIC COPYING MACHINES

(Section 837)

This section would suspend through December 31, 1990, the column 1 rate of duty on certain parts of direct process electrostatic copying machines, provided for in TSUS item 676.56.

The duty suspension would affect parts of indirect process electrostatic copying machines, commonly referred to as plain paper copiers (PPC's). These copiers reproduce documents by placing an image on an intermediate (typically an electrostatically charged photoconductor drum) and then transferring that image onto paper. The particular parts involved are quite varied and admit of no general description, other than their use in indirect process electrostatic copying machines. The parts are made of metal, plastic, and/or glass and include both assemblies and individual components.

This duty suspension is intended to help maintain the competitiveness of Xerox Corporation's manufacturing facilities (which employ 6,700 people), encourage Xerox and other domestic manufacturers to expand domestic production, stem the tide of American manufacturers transferring assembly operations overseas, encourage foreign investment in U.S. manufacturing facilities, and allow time for Xerox's major domestic suppliers to improve their quality and price competitiveness.

Parts of indirect process electrostatic copying machines are classified in TSUS item 676.56. The column 1 rate of duty for these items is 3.9 percent ad valorem. The column 2 rate of duty is 35 percent ad valorem.

Copier parts from Hong Kong, Mexico, the Republic of Korea, Singapore, and Taiwan are ineligible for GSP benefits because of the "competitive need" limitations. Otherwise these products are eligible for duty-free treatment under GSP, CBERA, and the United States-Israel Free Trade Area Implementation Act of 1985.

No identifiable industry, per se, produces parts for indirect process electrostatic copying machines. Domestic copier manufacturers contract with a large number and variety of individual firms for the supply of specific components. No estimates on the value of U.S. producers' shipments on these products are available.

Separate consumption figures for copier parts are not available. Imports in 1985 are estimated to have ranged from $140 million to $175 million.

Estimated revenue losses are estimated to be $6.475 million per year.

EXTRACORPOREAL SHOCK WAVE LITHOTRIPTERS IMPORTED BY NONPROFIT INSTITUTIONS

(Section 838)

This section would suspend the duty for extracorporeal shock wave lithotripters imported by nonprofit institutions through December 31, 1987. This provision provides for duty-free treatment retroactive to December 31, 1982, upon proper request filed with Customs.

This provision goes beyond the permanent duty reduction for all lithotripters provided for in section 808 and provides for duty-free treatment for such lithotripters which are imported by nonprofit hospitals and research or educational institutions. There has been no U.S. production of these lithotripters, except for investigational use.

CERTAIN PLASTIC SHEETING

(Section 839)

Section 839(a) would provide temporary duty-free treatment to one type of plastic sheeting presently classified in item 774.55 of the TSUS. A new item 915.10 would be added to grant duty-free entry to articles from countries entitled to column 1 duty rates. The column 2 rate of duty would remain 80 percent ad valorem.

The subject material is lead-impregnated, transparent, plastic sheeting, generically termed "acrylic sheet," which combines two properties—superb light transmission and radiation shielding. Included in the general composition of the sheet is lead in the amount of 30 percent by weight, although this can vary from lot to lot by about 1 to 3 percent. A sheet containing about 13 percent lead by weight is expected to enter the market soon.

Leaded acrylic sheet is used in a variety of products, ranging from shielding screens that allow doctors to view X-ray treatment while being protected from X-ray exposure to filters that control the amount of X-ray exposure to the patient.

Hospital officials reportedly do not consider unleaded acrylic sheet to be an acceptable substitute for leaded acrylic sheet as a radiation barrier, which is at present the only use for leaded acrylic sheet.

The current column 1 rate of duty for the subject sheeting is 5.3 percent ad valorem and the column 2 rate is 80 percent. The product is eligible for duty-free entry under both GSP and CBERA.

Although a licensing agreement exists to produce the polymer, no U.S. commercial production is currently occurring.

There is one importer of leaded acrylic sheet from Japan, presently the only source of the product. During 1980–84 imports of the product ranged from below $200,000 in 1980 to approximately $450,000 in subsequent years. The current market price for the leaded sheet ranges from about $12 per square foot to about $170 per square foot.

Estimated annual revenue losses are $30,000.

Section 839(b) would provide temporary duty-free treatment to certain plastic web sheeting (awa paper).

Awa paper is a plastic web sheeting imported by a Minnesota-based company for use in the production of reverse osmosis filter elements. It is comprised of polyester fibers bonded with a resin, and its precise thickness and uniform density are critical to ensuring quality performance of reverse osmosis filters. These filters are used in the process of making potable water from brackish groundwater, sea water, or other water containing high concentrations of salts.

Although the company uses a lower grade domestically produced sheeting for certain purposes, it must import awa paper from Japan because there is no domestic source for a qualitatively similar sheeting that can be used to produce reverse osmosis filter elements.

Awa paper is currently classified as a non-woven textile with a duty of 12.9 percent ad valorem plus two cents per pound. It is also subject to textile quotas under the Multi-Fiber Arrangement (MFA).

Section 839(b) establishes a new, temporary tariff classification to cover only awa paper. Other web sheetings which are produced in the United States are left in the textile category. To further narrow the application of this provision, the duty-free treatment has been limited to web sheeting used in the production of reverse osmosis filter elements for water purification systems.

DOLL WIG YARNS

(Section 840)

This section would suspend, through December 31, 1990, the column 1 rate of duty on certain specialty yarns of manmade fibers to be used in the manufacture of wigs for dolls covered by TSUS items 309.32, 309.33 and 389.62. The column 2 rate of duty would remain unchanged.

The manmade fiber yarns covered by this bill include grouped nylon, polypropylene, or modacrylic fibers of continuous length—referred to as filaments—that are colored and not textured, whether or not curled. These yarns are packaged on spools or other containers not more than 6 pounds each.

The average ad valorem equivalent (AVE) duties paid on all imports under the categories covered by this legislation ranged from 10.3 to 14.7 percent in 1984. U.S. imports of the subject yarns are not controlled under the MFA. Additionally, these yarns are not eligible for duty-free treatment under GSP or CBERA.

Because the level of domestic production of certain specialty manmade fiber yarns used to manufacture wigs for dolls is low, specific information identifying this sector of the manmade fiber industry is not available. However, it is estimated by the American Yarn Spinners Association that there are fewer than 10 domestic producers.

Industry sources believe that U.S. production of the subject yarn is less than 1 million pounds annually.

U.S. imports were estimated to have been 106,000 pounds in 1980 increasing to 431,000 pounds in 1984. During 1984, the leading sources were believed to be Japan, Taiwan, West Germany, and the United Kingdom. A&B Artistic Wig Corporation expects to import about half a million pounds per year of these yarns for doll wigs.

The import duties for 1984 that would not have been collected had this legislation been in effect were approximately $138,000 at the column 1 rates.

1-(3-SULFOPROPYL) PYRIDINIUM HYDROXIDE

(Section 841)

This section would suspend the column 1 rate of duty on imported 1-(3-sulfopropyl) pyridinium hydroxide, classified in item 406.42 of the Tariff Schedules of the United States (TSUS). The suspension would commence 15 days after the date of enactment and end on Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

The chemical, 1-(3-sulfopropyl) pyridinium hydroxide, is a liquid with a density of approximately ten pounds per gallon. It is synthesized from propane sultone and pyridine. The subject chemical is used exclusively in a proprietary formulation for copper and nickel electroplating baths.

At the present time, this chemical is classified in TSUS item 406.42 (other heterocyclic compounds and their derivatives) with a column 1 rate of duty of 13.5 percent ad valorem. The column 2 rate of duty is seven cents per pound plus 52 percent ad valorem.

The product is not eligible for duty-free entry under the GSP; however, it is eligible for duty-free treatment under CBERA and under the United States-Israel Free Trade Area Implementation Act of 1985 as indicated in the Special column. No least developed developing countries rate of duty is provided.

Industry sources and ITC records show that there were no U.S. producers of 1-(3-sulfopropyl) pyridinium hydroxide in the past five years. The Shell Chemical Company, the only U.S. producer of propane sultone, one of the raw materials used to synthesize 1-(3-sulfopropyl) pyridinium hydroxide, stopped production of propane sultone due to the associated industrial hazards.

As the subject chemical is classified in a residual (basket) TSUS item, the separate quantity or value of imports during 1980–85 is not available. Industry sources estimate that during this period a total of approximately 250,000 pounds of the subject chemical, valued at about $625,000, were imported into the United States. It is estimated that imports can be expected to grow by approximately ten percent each year during 1986–88.

Based on estimates from industry sources, the expected customs revenue losses are $19,000 in 1987 and $20,000 in 1988.

CHOLESTYRAMINE RESIN USP

(Section 842)

Section 842 would temporarily suspend the column 1 rate of duty for cross-linked polyvinylbenzyltrimethylammonium chloride (cholestyramine resin USP) classified in item 412.70 of the TSUS. The bill would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.30 with free entry for articles from countries entitled to MFN treatment commencing on or after the 15th day of enactment and ending on or before December 31, 1990. The column 2 rate of duty would remain unchanged.

Cholestyramine resin is a synthetic, strongly basic, anion-exchange resin consisting of a copolymer of styrene and divinylbenzene with quaternary ammonium groups. According to an industry source, the resin is available in both the USP grade and "regular" grade. The latter has a water content of 70 percent, compared with 12 percent for the USP grade. The resin is used medicinally as a cholesterol lowering agent and is marketed domestically by Mead Johnson under the brand name "Questran." The orally ingested resin, a white to buff-colored, fine hygroscopic powder, absorbs bile acids in the intestine, without being absorbed from the digestive tract. As bile acids are removed from the enterohepatic circulation, increased oxidation of cholesterol to bile acids occurs.

Several patents are presently in effect that relate to the product as well as its applications. These patents are effective into the next century, according to an industry source. As of May 14, 1985, however, the patent on method-of-use expired. This was considered the main patent on the product since a patent on the polymer itself expired several years ago.

There are no U.S. manufacturers of finely ground, polyvinylbenzltrimethylammonium chloride, anion-exchange resins approved by the Food and Drug Administration (FDA) for use as antihyperlipoproteinemics. It therefore appears that a tariff on this product is unnecessary.

Cholestyramine resin USP is presently classified under item 412.70. The duty rate for column 1 countries and for LDDC's is 6.9 percent ad valorem. The column 2 duty rate is 7 cents per pound plus 45 percent ad valorem. The item number has no concession for a staged reduction in duty rates. The resin is not eligible for duty-free treatment under the GSP; however, it is eligible for duty-free treatment under the CBERA and under the United States-Israel Free Trade Area Implementation Act of 1985 indicated in the special column.

The market for hypolipidemics, agents used to reduce cholesterol and lipid levels in the blood, was valued at $60 million in 1984, an increase of 20 percent from 1983. Two of the hypolipidemics are anion-exchange resins. These resins are commonly called bile-acid sequestrants. One is cholestyramine resin USP and the other is colestipol hydrochloride, marketed under the brand name "Colestid Granules." The latter, although identical in end use to cholestyramine resin, has a different polymer structure. Of the approximately 2.4 million prescriptions for hypolipidemics written in 1984, "Questran" and "Colestid" accounted for 15 percent and 1 percent, respectively. "Questran" is expected to account for 25 percent of the projected $300 million market for hypolipidemics in 1990.

There is no significant medical difference between the two anion-exchange resin products. The preference in prescriptions was attributed to product loyalty, the length of time the product has been on the market, and the patient's tolerance of either product. Price is not considered a significant factor.

As the anion-exchange resin is classified in a residual (basket) TSUS item, the quantity or value of imports is not available. According to an industry source, however, there were no imports of this product prior to 1985. Approximately 250,000 pounds were imported in 1985, valued at $1–2 million. The industry source stated that projected total imports for 1986 will amount to 400,000–500,000 pounds, valued at $2–4 million. During 1987–90, imports are expected to amount to 550,000 pounds per year, valued at approximately $2–4 million per year. The current source of these imports is Italy, although the product is also available from France.

Based on estimates from industry sources, annual revenue losses are expected to be approximatly $190,000.

METHYLENE BLUE

(Section 843)

Section 843 would provide for a suspension of the column 1 rate of duty for methylene blue. The column 2 rate of duty would not be changed. The duty suspension would be effective with respect to articles entered or withdrawn for consumption on or after the 15th day after the date of enactment of the bill, and would be in effect through December 31, 1990.

Methylene blue is used as a dye for cotton and wool in the textile industry, as an indicator in chemical oxidation-reduction reactions, as a biological and bacteriological stain, as an antidote to cyanide poisoning, and as an anodyne and an antiperiodic. In addition, it is used as a processing stabilizer in the manufacture of acrylic monomers. Although other chemical stabilizers are produced in the United States, this chemical meets specifications in selected applications not served by the other stabilizers.

The column 1 rate of duty of methylene blue is 20 percent ad valorem and the column 2 rate is 7 cents per pound plus 70 percent ad valorem.

Imports of this product are not eligible for GSP but are eligible for CBERA.

There is no domestic production.

Imports have averaged 36,000 pounds per year in the period 1979–1983 with the exception of a spurt in imports in 1980 to 94,000 pounds.

Based on most recent import data, revenue loss would be approximately $3,000 per year during 1987–1990.

NAPHTHALENE DIISOCYANATE

(Section 844)

This legislation would suspend through December 31, 1990 the MFN duty on imports of 1,5 naphthalene diisocyanate (NDI), provided for in item 405.82 of the TSUS. At present, this chemical enters the United States with a tariff rate of 13.5 percent ad valorem (the non-MFN duty rate would remain unchanged).

NDI is a compound used primarily in the production of high performance synthetic rubber. This rubber is used in the suspension systems of many new models of domestically assembled front-wheel drive cars. NDI is imported by Mobay Corporation of Pittsburgh, Pennsylvania from its parent company in West Germany.

NDI is not manufactured in the United States, but some domestic firms are engaged in the production of compounds which are potential competitors of NDI.

Based on the available information, however, the Committee has concluded that NDI is not genuinely competitive with either toluene diisocyanate (TDI) or 4,4′ diphenylmethane diisocyanate (MDI), domestically produced products which are similar from economic or engineering standpoints. Currently, NDI has only one major use; it is used as a component in the production of automobile load absorbers or bumpers. The automobile company which is the chief buyer of NDI has determined that NDI alone is suitable for the demands of this application. Even with the duty suspension, NDI will cost nearly 10 times more than either TDI or MDI. The Committee concluded that suspending the duty on NDI will not give this chemical or its producers any unfair advantage.

3-AMINO-3-METHYL-1-BUTYNE

(Section 845)

Section 845 would suspend the column 1 duty on 3-amino-3-methyl-1-butyne through December 31, 1990. The column 2 duty is not affected by the bill. This chemical intermediate presently enters the United States under TSUS item 425.52 at a MFN duty of 7.9 percent ad valorem. Imports under this item are eligible for duty-free treatment under USP.

There is no domestic production of this intermediate, and no directly competing product. 3-amino-3-methyl-1-butyne is employed as a chemical intermediate in the manufacture of pronamide, a herbicide used to control grass and weeds for selected crops. Pronomide is manufactured by a single U.S. firm which imports the intermediate from subsidiaries abroad.

The revenue impact is undetermined because the subject chemical enters in a basket category. It is estimated that revenue foregone would be approximately $50,000 per year for the period 1987 through 1990.

DICYCLOHEXYLBENZOTHIAZYLSULFENAMIDE

(Section 846)

Section 846 would suspend the column 1 rate of duty for dicyclohexylbenzothiazylsulfenamide (DCBS), classified in item 406.39 of the TSUS, through December 31, 1990, and would add item 906.45 to subpart B of part 1 of the Appendix to the TSUS. The column 2 rate of duty would remain unchanged.

DCBS is a rubber-processing accelerator which speeds the cross-linking reaction of rubber with sulfur. Sulfur bridge cross-links (vulcanization) makes the rubber harder and stronger, while eliminating the tackiness of untreated rubber. Rubber compounders use an average of 1.5 pounds of DCBS per 100 pounds of raw rubber.

The present duty on DCBS increases the manufacturing cost of steel-belted radial ply tires. At the present time, DCBS is not produced in the United States.

DCBS is classified in TSUS item 406.39, with a column 1 duty rate of 1.7 cents per pound plus 16.2 percent ad valorem. The column 2 rate is 7 cents per pound plus 52 percent ad valorem. DCBS is not eligible for duty free treatment under the GSP. However, imports from designated Caribbean countries could be eligible for duty free treatment under the CBERA.

There is no domestic production.

DCBS is regarded as a specialty adhesion promoter, with specific application in the steel belting construction of radial tires. Domestic producers of other sulfenamide accelerators are American Cyanamid Co., B.F. Goodrich Chemical Co., the Goodyear Tire and Rubber Co., Monsanto Corp., and Uniroyal, Inc. These producers regard DCBS as a low-volume specialty accelerator that will not adversely affect their production or sales of sulfenamide accelerators.

The major importer of DCBS is Mobay Chemical Company, which imports it from its parent company, Bayer A. G. of the Federal Republic of Germany. From 1979 to 1983 imports of DCBS ranged from 88,000 to 190,000 pounds. Industry sources estimate that imports of DCBS during 1984 were less than 500,000 pounds.

The estimated annual revenue loss is estimated to be $373,000.

D-6-METHOXY-A-METHYL-2-NAPHTHALENEACETIC ACID AND ITS SODIUM SALT

(Section 847)

The proposed legislation would establish a new item in the Appendix to the TSUS in order to afford temporary duty-free treatment to imports of d-6-methoxy-a-methyl-2-naphthaleneacetic acid from countries entitled to column 1 rates of duty. The column 2 rate of duty would not be affected by the bill, and the suspension of the column 1 of duty would continue through December 31, 1990.

The subject products are pharmaceutical intermediates which are covered by U.S. and foreign patents and are utilized in the manufacture of anti-inflammatory drugs used to treat arthritis. According to the proponent of the legislation—the owner of the patents—basic materials are exported from the United States to the Bahamas and to Ireland, which grant duty-free entry thereto on the basis that there is no domestic supplier of the materials (because of the patents). In those two countries, the basic materials are manufactured into the subject intermediates, which are then shipped to Puerto Rico for further processing and packaging; the intermediates contain both U.S. and foreign component chemical products. It is believed that no substitute for the finished drugs exists for those persons for whom it is prescribed. Because of the patents, no U.S.-produced alternative source for the subject intermediates exists. The acid, known as naproxen, has the chemical formula C14H1403 and the sodium salt has the formula C14 H13Na03.

These products are classified in item 412.22 of the TSUS, which covers nonenumerated analgesics, antipyretics, and nonhormonal anti-inflammatory agents. These articles are dutiable at a column 1 rate of 6.8 percent ad valorem and a column 2 rate of seven cents per pound plus 47.5 percent ad valorem. Imports from beneficiary countries under the GSP (except for the Bahamas) and the CBERA are eligible for duty-free entry, as are products of Israel.

There is no known domestic production of the subject products. Syntex Corporation, the owner of the patents on these products, manufactures some of the raw materials for the subject products at its facility in Boulder, Colorado.

It is believed that the maximum customs revenue loss annually during the period of the duty suspension would range from $150,000 to $325,000, varying with the quantities of the subject products imported and with the amount of drawback of customs duties claimed by the U.S. importer-exporter.

JACQUARD CARDS AND JACQUARD HEADS

(Section 848)

This section would suspend the column 1 rate of duty on jacquard cards and jacquard heads, provided for in TSUS items 670.56 and 670.74, respectively, through December 31, 1990.

Jacquard heads control the operation of jacquard looms. Jacquard looms are used to produce tapestries, brocade, brocatelle, figured neckties, and dresses. Jacquard cards consist of a series of punched cardboard strips which are used to provide weaving pattern instructions to the looms. Each card controls the action of one warp of thread for the passage of one pick. The number of cards attached to a jacquard loom depends on the intricacy of the weave design. The cards are joined together by lacing to form a chain pattern. Today, these cards have been replaced by heavily reinforced, treated paper rolls which, after machine punching, resemble player piano rolls. The paper rolls are still referred to by the industry as jacquard cards.

The purpose of this provision is to reduce the cost of imported jacquard cards and heads through the elimination of tariffs. Industry sources indicated that they have been unable to locate domestic manufacturers of jacquard cards and heads.

2,2-BIS (4-CYANATOPHENYL), PHENYLMETHYLAMINOPYRAZOLE, BENZETHONIUM CHLORIDE, METALDEHYDE, AND PARALDEHYDE

(Sections 849, 850, 851, 853, and 854, respectively)

These sections would provide temporary duty-free treatment for the following chemicals: 2,2-bis-(4-cyanatophenyl), aminomethylphenylpyrazole, benzethonium chloride, metaldehyde, and paraldehyde USP, classified in TSUS items 405.82, 406.36, 408.32, 425.42, 427.58, and 439.50, respectively.

All of the chemicals affected by this provision are produced synthetically from petroleum products. These chemicals have a variety of primary uses.

The chemical 2,2-bis-(4-cyanatophenyl) is used exclusively in the production of a specialty resin which is, in turn, used to manufacture printed circuit boards.

U.S. Pharmaceutical (U.S.P.) grade paraldehyde, also known as paracetaldehyde, is a rapidly acting hypnotic which has been in use for over a century, primarily to treat delirium tremens.

Benzethonium chloride is a cationic surface active agent used as a germicide.

Metaldehyde is a crystalline solid chiefly used in the western United States to protect vineyards from destruction by snails and slugs.

Metaldehyde, and paraldehyde USP are eligible for duty-free treatment under the GSP, the CBERA, and the United States-Israel Free Trade Area Implementation Act of 1985. Imports of benzethonium chloride from Israel are currently subject to annual staged reductions in duty until January 1989, when they will be eligible for duty-free treatment. The current rate for these imports from Israel is 10.7 percent ad valorem.

There was no domestic production of any of the subject chemicals during 1981–85.

An industry source has estimated the value of 1985 imports of the other chemicals as shown in the following tabulation.

Chemical	*Value*
Aminomethylphenylpyrazole	$100–200,000
Benzethonium chloride	500–600,000
2,2-bis-(4-Cyanatophenyl)	50–100,000
Metaldehyde	1,000,000
Paraldehyde USP	20–30,000

Expected annual revenue losses for 1987 are as follows:

Chemical	*Estimated Loss ($1,000)*
Aminomethylphenylpyrazole	6.7–13
Benzethonium chloride	55–66
2,2-bis-(4-Cyanatophenyl)	7–14
Metaldehyde	60
Paraldehyde, USP	0.75–1

MANEB, ZINEB, MANCOZEB, AND METIRAM

(Section 852)

This section would suspend temporarily the column 1 rate of duty for mixtures of maneb, zineb, mancozeb, and metiram, under item 432.15 of the TSUS. The bill would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.60 with free entry for articles from countries entitled to MFN treatment commencing on or after the 15th day after the date of enactment and ending on or before Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

The products covered include derivatives of ethylenebisdithiocarbamate (EBDC) registered for use as agricultural fungicides. These mixtures consist of active ingredients, related reaction products, and application adjuvants such as suspension agents, dispersants, inert liquid and/or solid diluents, thickeners, defoamers, solvents, stabilizers, colorants, water, and antifreeze. EBDC fungicides are used to control a wide spectrum of diseases on most agronomic crops including vegetables, fruits, vine crops, field crops, ornamentals, nursery stock, and seed. There are no commercial end uses for these products other than as agricultural fungicides. Currently, there are a number of other fungicides produced in the United States; however, EBDC-based fungicides are usually the most cost-effective, broad-spectrum fungicides available to U.S. farmers. Target fungi have not developed resistance to these fungicides as has been the case with some newer systemic fungicides.

Mixtures of maneb, zineb, mancozeb, and metiram are currently classified under item 432.15, mixtures of pesticides not specially provided for. Articles entered under this item number are presently dutiable at a column 1 rate of 3.7 percent ad valorem, but not less than the highest rate applicable to any component material, and a column 2 rate of 25 percent ad valorem, but not less than the highest rate applicable to any component material.

Articles classified in item 432.15 are eligible for duty-free treatment under the CBERA, the GSP, and the United States-Israel Free Trade Area Implementation Act of 1985.

Only one U.S. firm, Rohm and Haas Company in Philadelphia, Pennsylvania, produced the specified EBDC derivatives within the United States during the past five years. Production of these chemicals in the United States by Rohm and Haas was discontinued in 1985.

Data on U.S. production of these products are not available because to do so would reveal business confidential material.

Exact import data on these products are not available as they are classified in a "basket" item number. However, since Rohm and Haas was the only U.S. importer of these products during 1980–85, their import data reflect trade in these products. A company spokesman said that imports were 1.6 million pounds in 1981, 2.6 million pounds in 1984, and 6.7 million pounds in 1985. Rohm and Haas did not import these products during 1982 and 1983.

Based on estimates from industry sources, $1,000,000 is the estimated annual revenue losses during 1987–89.

CYCLOSPORINE

(Section 855)

This section would suspend through December 31, 1990, the column 1 rate of duty for cyclosporine, an immunosuppressive agent used for the prevention of rejection of kidney, liver, or heart transplants. Clinical trials are underway for other applications of the drug, including a potential treatment for AIDS.

Cyclosporine can be classified in either TSUS item 439.30 (advanced natural drugs, not elsewhere specified) or item 439.50 (other drugs, n.e.s., including synthetic drugs), depending on the form in which it is imported. If imported as the bulk powder, the form used by the University of Minnesota, the drug is classified in item 439.30 with a column 1 rate of duty of 1.5 percent ad valorem. The column 2 rate of duty for this tariff item is 10 percent ad valorem. Products entering under this tariff item are eligible for duty-free treatment if they are imported from LDDC's or under GSP, CBERA, or the U.S.-Israel Free Trade Agreement.

If the cyclosporine is imported as an oral solution or a concentrate for intravenous injection, it is classified in TSUS item 439.50 with a column 1 rate of duty 3.7 percent ad valorem and a column 2 rate of 25 percent ad valorem. This TSUS item has the same special rates of duty as does TSUS item 439.30 for products from LDDC's, beneficiaries of GSP and CBERA, and Israel.

There was no domestic production or export of cyclosporine during 1981–85.

Industry sources estimate that the U.S. market for this product was valued at $55 million in 1985; the market is supplied entirely by imports.

Based on estimates from industry sources, expected annual revenue losses during 1987–90 will range from $0.8 million to $1.1 million per year.

GLASS INNERS FOR VACUUM FLASKS

(Section 856)

This section would temporarily lower the column 1 duty on glass inners to 9 percent ad valorem. The reduction would remain in effect through December 31, 1990.

The provision is intended to reduce the rate for glass inners to bring them into conformity with the rates for completed vacuum bottles, thus providing tariff equity for U.S. manufacturers of vacuum bottles.

Domestically manufactured glass inners, which are inserted in vacuum bottles to keep food and beverages at selected temperatures for up to 8 hours, are composed of two blanks, one of which fits inside the other. The blanks are silvered, yielding a mirror-like surface that maintains the temperature of the food or beverage inside by reflecting heat. As the inner blank is inserted in the outer blank, an asbestos pad is placed between the two walls and all air between the two walls is evacuated, creating a vacuum. The two blanks are then neck-sealed (sealed at the top), creating a double-walled cylinder which is placed in a vacuum bottle. Glass inners can also be manufactured in a one-step process, such as that used by Thermos at their British plant, and by more labor-intensive hand-blown methods, more commonly in countries with low labor costs.

Glass inners generally vary in capacity from less than one pint to more than 4 pints; they also differ in design, depending upon the specifications of the vacuum bottle manufacturer. Most inners are installed in new vacuum bottles, with a limited number used as replacements. Glass inners enter the United States under TSUS items 545.31, 545.34, 545.35, and 545.37. The column 1 duties for these categories are 2 cents each plus 10.4 percent ad valorem, 2.8 cents each plus 8 percent ad valorem, 4 cents each plus 8 percent ad valorem, and 6 cents each plus 8 percent ad valorem, respectively. The ad valorem equivalent of these compound rates are 15.7 percent, 13.6 percent, 14.8 percent, and 12.6 percent, respectively. Imports under these TSUS items are eligible for duty-free treatment under the GSP and CBERA. They all receive preferential duty treatment under the U.S.-Israel Free Trade Agreement.

There is no U.S. production of glass inners.

Total U.S. imports of glass inners during 1985 were 2,894,000 units, valued at $2,240,000.

The revenue loss due to enactment of this provision would be approximately $80,000.

BENZENOID DYE INTERMEDIATES

(Section 857)

This provision temporarily suspends the duty on certain benzenoid dye intermediates. These products are used in the manufacture of finished dyestuffs, which are sold to the textile, paint, paper, and food industries.

There are no domestic commercial manufacturers of any of the benzenoid intermediates listed in section 863. Nor are there any U.S.-manufactured products which are substitutes for these benzenoid intermediates. As a result, these products must be purchased from foreign sources.

Suspension of duties is expected to help reduce production costs for U.S. dyestuff manufacturers and assist the domestic industry's efforts to maintain U.S. market share. In addition, temporary suspension of these duties would improve the position of domestic dyestuff manufacturers in the world market.

TUNGSTEN ORE

(Section 858)

This provision would suspend the column 1 rate of duty on tungsten ore through December 31, 1990. The column 2 rate of duty would not be affected.

Tungsten ore is the crude mineral form from which tungsten metal is obtained. The extreme hardness of tungsten makes it a preferred metalworking material for cutting edges of machine tools subject to intense wear or abrasion, as well as for metal surfaces in forming and shaping dies. The mining and petroleum industries, for example, use considerable quantities of tungsten carbide in drill bits, in the cutting edges of earth moving equipment, and in crushing machinery.

Mill products made from tungsten metal powder are used by the electronics and electrical industries.

In 1984 the end uses of tungsten were as follows: metalworking, mining and construction machinery and equipment, 75 percent; electrical machinery and equipment, 9 percent; lamps and lighting, 7 percent; transportation, 5 percent; and other, 4 percent.

According to industry sources, in the past few years there has been very little domestic tungsten concentrate available for the processing industry since (1) mine production has been at low levels for three years due to low concentrate market prices, and (2) most mine production has been captively consumed by producers of ammonium partungsate. The United States relied on imports of tungsten ore and concentrate for over 55 percent of reported consumption for the past three years, with well over half of the imports entering duty-free as a result of GSP. Domestic mining/processing companies purchase imports to augment their own production and could, therefore, benefit from the temporary duty suspension which would have the result of lowering the cost of the imported raw material.

U.S. imports of tungsten ore and concentrate are classified in TSUS item 601.54 with a column 1 duty of 17 cents per pound. Tungsten ore is eligible for duty-free entry under both the GSP and CBERA.

The tungsten industry is highly concentrated, and most companies are vertically integrated. In 1984, about 95 percent of the domestic tungsten concentrate production came from three mines in California and Colorado. Most major domestic mines operated below capacity or were temporarily closed, primarily due to low concentrate prices and demand. Mine capacity utilization was 24 percent in 1984.

U.S. imports of tungsten ore increased from 11.3 million pounds in 1980 to 12.8 million pounds in 1984. In 1984, tungsten ore was supplied by Canada (25 percent), Bolivia (22 percent), Thailand (13 percent), Portugal (10 percent) and Peru (10 percent). There were no imports of tungsten ore from column 2 sources. Of the GSP imports, Bolivia accounted for 32 percent; Thailand, 18 percent; Portugal, 15 percent; and Peru, 15 percent.

Based on the levels of imports of tungsten ore in 1984, it is estimated that enactment of this legislation would result in the loss of customs revenues of approximately $659,000 annually.

CHLOR AMINO BASE

(Section 859)

This section would suspend through December 31, 1990, the column 1 rate of duty for 4-chloro-2,5-dimethoxyaniline (also known as chlor amino base).

The chemical, 4-chloro-2,5-dimethoxyaniline, is a benzenoid intermediate chemical used to manufacture Pigment Yellow 83. Because of the unique chemical properties of the subject chemical, no other product can be substituted in the production of Pigment Yellow 83.

The suspension of duty will act to lower the overall cost of producing textiles in the United States since the chemical is used as a precursor in the production of printing ink and dyes for textiles.

Chlor amino base is classified under TSUS item 405.01 with a column 1 rate of duty of 6.1 percent ad valorem. The column 2 rate of duty is 7 cents per pound plus 41.5 percent ad valorem. The product is not eligible for duty-free treatment under the GSP; however, it is eligible for duty-free treatment under CBERA and under the United States-Israel Free Trade Area Implementation Act of 1985.

Only one domestic manufacturer, Pfister Chemical, Inc., produces 4-chloro-2,5-dimethoxyaniline. Production data cannot be included because their publication would reveal confidential business material.

Industry sources estimate that imports of chlor amino base in 1985 were 254,247 pounds, valued at $1.2 million.

Estimated revenue losses are expected to average about $80,000 per year.

NITRO SULFON B

(Section 860)

This section would suspend through December 31, 1990, the column 1 rate of duty for 2-[(3-Nitrophenyl)sulfonyl] ethanol (also called nitro sulfon B).

Nitro sulfon B is a benzenoid intermediate chemical used in the production of certain dyes known as fiber-reactive dyes. These dyes are used in the domestic textile industry principally to dye cotton fabrics.

The suspension of duty will act to lower the overall cost of producing textiles in the United States since the chemical is used as a precursor in the production of dyes for textiles.

Nitro sulfon B is classified under TSUS item 406.00 (Organosulfur compounds) with a column 1 rate of duty of 6.7 percent ad valorem. The column 2 rate of duty is 7 cents per pound plus 40.5 percent ad valorem. The product is not eligible for duty-free treatment under the GSP; however, it is eligible for duty-free treatment under CBERA and under the United States-Israel Free Trade Area Implementation Act of 1985.

During 1981-85, there was no domestic production of nitro sulfon B.

Industry sources estimate that in 1985 imports of nitro sulfon B were 84,454 pounds, valued at $384,266.

Based on estimates from industry sources, expected revenue losses during 1987–90 will be $88,000 to $96,000 per year.

4-CHLORO-2-NITROANILINE; AMINOSULFON BR; ACETQUINONE BASE; AND DIAMINOPHENETOLESULFATE

(Sections 861, 862, 863, and 864, respectively)

Like the products covered by sections 859 and 860, these chemicals are precursors used in the production of printing ink and dyes for textiles. Sections 861, 862, 863, and 864 suspend the applicable column 1 duties on these chemicals through December 31, 1990.

3-(4'Aminobenzamido)phenyl-beta-hydroxyethyl sulfone (also known as aminosulfon BR) is an intermediate used for reactive dyestuffs which are used to dye cotton and wool, but primarily cotton. 4-Chloro-2-nitroaniline and 2,5-dimethoxyacetanilide (also known as acetquinone base) are used to make pigments which are used in paints, plastics, and textile printing. 3,4-Diaminophenetole dihydrogensulfate (also known as diaminophenetolesulfate) is used to make a vat dyestuff, used primarily to dye cotton.

These four chemicals are not produced in the United States. Suspension of duties should lower costs and improve the ability of U.S. textile manufacturers to compete. Suspension of the duties on these four chemicals will not cause a serious impact upon Government revenue.

MIXTURES OF CROSS-LINKED SODIUM POLYACRYLATE POLYMERS

(Section 865)

This section would suspend the column 1 rate of duty for certain mixtures of cross-linked sodium polyacrylate polymers through October 31, 1987, and provide for duty-free treatment retroactive to July 1, 1985, upon proper request filed with Customs.

Sodium polyacrylate polymers are colorless, odorless powders which are used principally to absorb large amounts of liquids or as additives to water-based mixtures to form flocculants. Additional properties associated with polyacrylate polymers are increased viscosities of water-based mixtures with limited lubricity. There are many special varieties and proprietary formulations used in many different industries, including boiler treatment compounds, water purification, and in drilling muds. There are few real differences between polyacrylate polymers used in the various industries, although some manufacturers claim proprietary features which make their products unique.

Sodium polyacrylate polymer mixtures are provided for in TSUS item 430.20, with a column 1 rate of 3.7 percent ad valorem, but not less than the highest rate applicable to any component compound. The column 2 rate is 25 percent ad valorem, but not less than the highest rate applicable to any component compound. Imports are eligible for duty-free treatment under the GSP and the CBERA.

Separate production data are not available for cross-linked sodium polyacrylate polymers. However, industry representatives estimate that total domestic production is about 15 million pounds per year.

Significant imports of this product did not begin until 1984, when levels reached about 50 million pounds, valued at about $77 million. Imports are thought to have remained at this level in 1986, accounting for about one-half of total U.S. consumption.

The estimated annual revenue loss would amount to approximately $3 million per year.

DIPHENYL GUANIDINE AND DI-ORTHO-TOLYL GUANIDINE

(Section 866)

Section 866 temporarily suspends the column 1 rate of duty for diphenyl guanidine and di-ortho-tolyl guanidine, classified in item 405.52 of the TSUS. The legislation would amend the TSUS to add a new item with free entry for articles from countries entitled to MFN treatment, commencing on the date of enactment and ending on December 31, 1990. The Column 2 rate of duty would remain unchanged.

At the present time, these chemicals are not produced in the United States, although they were produced domestically as recently as 1981. Domestic consumers must now rely on imports as their only source. This legislation would temporarily eliminate the duty on these chemicals that increases the manufacturing costs of the end-use products.

Diphenyl guanidine and di-ortho-tolyl guanidine are synthetic organic chemicals produced, in part, from benzene and toluene derivatives. Both chemicals are principally used as curing accelerators for synthetic and natural rubbers which are ultimately used in the production of automobile tires and shoe soles. According to industry sources, other competitively-priced accelerators either do not work as well as these two products or have health-related problems which make their use less desirable.

N-ETHYL ORTHO/PARA TOLUENESULFONAMIDE

(Section 867)

This section suspends until December 31, 1990, the duty on N-ethyl ortho/para toluenesulfonamide, provided for in item 409.34 of the TSUS. The only domestic producer of this product, Monsanto Chemical Company ceased production in 1986. Since the only supply is from imports, the Committee believes it is appropriate to suspend the duty on a temporary basis.

6-AMINO-1-NAPHTHOL-3-SULFONIC ACID (J ACID)

(Section 868)

J Acid is a chemical used extensively as an intermediate for azo dyestuff manufacture with major uses in paper and cotton products. The primary paper usages include bathroom tissues, towels, napkins, facial tissues, stationery, and business forms. The only reported U.S. producer was American Color and Chemical Corporation, which discontinued production in 1981. Current sources of supply are from Italy, West Germany, Japan, and the Peoples Republic of China. Because there is no domestic production of this product, this section suspends the otherwise applicable duty through December 31, 1990.

MANCOZEB, DINOCAP, STABILIZER AND APPLICATION ADJUVANTS

(Section 869)

This section would suspend the column 1 (MFN) duty on mixtures of mancozeb, dinocap, stabilizer and application adjuvants through Dec. 31, 1990. Currently, imports of mancozeb/dinocap mixtures would enter under item 408.38 at an MFN duty of 0.8 cents per pound plus 9.7 percent ad valorem. Imports under TSUS item 408.38 are eligible for duty-free treatment under the GSP. This provision would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.28 with duty-free entry for articles entitled to MFN treatment commencing on or after the fifteenth day after the date of enactment and ending on or before December 31, 1990. The column 2 rate of duty would remain unchanged.

There are no U.S. manufacturers of mancozeb/dinocap. These mixtures are produced in Europe, under patents which expire in 1991, by subsidiaries of a U.S. firm. There is no single product manufactured or sold in the United States that is a direct replacement for the mancozeb/dinocap mixtures marketed domestically as Dikar. There are no commercial end used for mancozeb/dinocap other than as an agricultural fungicide-miticide. Several products control one or more pests controlled by Dikar but no single product has as broad a control spectrum of fungi and mites.

The revenue impact is undetermined because the subject products enter in a basket category. It is estimated that revenue foregone would be approximately $300,000 per year for the period 1987 through 1990.

BETA NAPHTHOL

(Section 870)

Section 870 suspends temporarily, until December 31, 1990, the import duty on beta naphthol. Beta naphthol is a chemical used primarily for production of organic pigments, rubber processing chemicals, and dye intermediates. The only U.S. producer, American Cyanamid, closed its plant at Willow Island, West Virginia in 1982. As a result, all present U.S. requirements are currently being supplied from import sources in Italy, West Germany, and the People's Republic of China.

The major reported use for beta naphthol is in chemicals used as antioxidants for synthetic rubber. Beta naphthol is also used in the manufacture of at least seven major organic pigments which represent close to half of the total 1985 volume of red and orange pigments produced in the United States. There is no direct substitute material available. The major pigment products include: Pigment Red 3, 4, 49:1, and 53 and pigment orange 5 and 45. The products produced are used in the manufacture of printing inks, crayons, paints, and coloring plastics. Estimated consumption for these uses was approximately 3.8 million pounds in 1985.

SETHOXYDIM

(Section 871)

This section would suspend the column 1 duty rate on mixtures of sethoxydim through December 31, 1990.

Sethoxydim, more specifically referred to as 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, is an unstable oily liquid produced by a series of proprietary chemical reactions using nonbenzenoid starting materials. In commercial terms, sethoxydim is a formulated chemical product typically distributed in various forms, such as dust or concentrate, for application in no-till agricultural control of grassy weeds among alfalfa, cotton, peanuts, and some other types of vegetable crops.

Imports of unmixed sethoxydim would enter under TSUS item 425.52. However, sethoxydim is unstable and generally imported as a 50 percent solution in xylene or in other benzenoid solvents. The xylene solution is classifiable in TSUS item 430.20, with a column 1 duty rate of 3.7 percent ad valorem, but not less than the highest rate applicable to any component compound (in this case, the highest component rate is that for sethoxydim, or 7.9 percent ad valorem). Other benzenoid solutions would enter under TSUS item 407.19, with a column 1 rate of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. Both types of solution are eligible for duty-free treatment under the CBERA and for preferential treatment under the U.S.-Israel Free Trade Agreement. Only the latter is eligible for GSP treatment.

Sethoxydim is not produced in the United States. Its method of manufacture is considered highly proprietary, and it is not likely to be licensed for production elsewhere.

Separate import data for sethoxydim are not available. Annual imports of sethoxydim are estimated to have remained at a level of about 2.0 million pounds, valued at about $28.0 million, since 1983, the first year in which this chemical was entered. The only known source of imports of this chemical in 1985 was West Germany.

The estimated annual loss of customs revenues would amount to approximately $2.2 million during the proposed suspension.

3-ETHYLAMINO-P-CRESOL

(Section 872)

This section would suspend through December 31, 1990, the column 1 rate of duty for 3-ethylamino-p-cresol classified under item 404.96 of the Tariff Schedules of the United States (TSUS).

The chemical 3-ethylamino-p-cresol is an intermediate chemical used in the production of certain dyes such as basic red 1. Minor uses for the subject chemical include the manufacture of certain fluorescent brightening agents used in paper processing.

The purpose of the duty suspension is to permit domestic production of basic red 1 to be price competitive with the imported product.

3-Ethylamino-p-cresol is classified under TSUS item 404.96, where it is one of eight chemicals listed by name. The column 1 rate of duty is 7.8 percent ad valorem, and the column 2 rate of duty is 7 cents per pound plus 65 percent ad valorem. The chemical is eligible for duty-free treatment under the CBERA, but is not eligible for GSP preferences.

There is no U.S. production of the chemical.

Separate import data on the chemical are not available. However, industry sources estimate that approximately 150,000 pounds valued at $720,000 were imported into the United States in 1985.

Based on estimates from industry sources, expected revenue losses would be about $60,000 per year.

ROSACHLORIDE LUMPS

(Section 873)

1 Amino-2 chloro-4 hydroxy anthraquinone (rosachloride lumps) is an intermediate used in production of dyes used for textile fabrics. It is used primarily for production of disperse dyes. These dyes are employed for the coloring or printing on textile fabrics, including, acetate, triacetate, nylon, polyester, and various blends of these fabrics. The major dyes that can be produced from this intermediate are disperse red 55:1, 60, 91 and 263. There are no known domestic suppliers since the discontinuance of production by BASF Wyandotte Corporation in 1978. All current imports come from Europe and were approximately 100,000 pounds during 1986.

This provision will suspend the duty on imports of this product through December 31, 1990. A lower cost for this intermediate will permit an expansion of production in U.S. dye facilities and improve competitiveness against any alternate dyes suggested as substitutes. There are currently three U.S. producers listed for these products.

C-AMINES

(Section 874)

Section 874 suspends the duty on C-Amines until December 31, 1990. C-Amines are chemical intermediates used for the production of pigments. The major uses are in pigment red 52:1, 52:2, 53, 53:1, and 200 and pigment orange 46. The major uses of the pigments produced from C-Amine are for printing inks, with small amounts used for the coloration of coating and plastics. The last domestic production of C-Amines was in 1986 by BASF Wyandotte Corporation. Prior to that, American Cyanamid discontinued production in 1982. The only current sources are via imports from Korea and Japan. This material is used in approximately 20 percent of the red and orange pigments made in the United States. Approximately 17 domestic pigment producers would benefit from the duty elimination.

DIAMINO IMID SP

(Section 875)

Section 875 temporarily suspends the duty on imports of Diamino Imid SP until December 31, 1990. Diamino Imid SP is a chemical intermediate used for the production of disperse dyes which are employed for dyeing or printing on textile fabrics, including acetate, triacetate, nylon, polyester, and various blends of these fabrics. There are no known domestic suppliers for this intermediate since the discontinuance of its production by BASF Wyandotte Corporation in 1985. All current imports come from Europe and were estimated to be 30,000 pounds in 1986.

CERTAIN STUFFED OR TOY FIGURES

(Section 876)

Section 876 would temporarily suspend the column 1 rate of duty applicable to imports of stuffed or filled toy figures of animate objects, not having a spring mechanism and not exceeding 25 inches in length, width, or height and valued over 10 cents per inch of height, classified in items 737.30 and 737.40 of the TSUS. The duty suspension would be in effect through December 31, 1990.

These products are stuffed toy animals or figures having predominantly humanoid or animal-like features and are not commonly known as dolls. Stuffed toy figures of animate objects range from small inexpensive curiosities to larger-than-life-size animals and characters costing many hundreds of dollars. One category of stuffed animal is the low-quality, inexpensive animal of rather simple design, generally used as prizes in carnival games. However, the proposed legislation only covers those figures valued over 10 cents per inch of height, a category in which few carnival stuffed toys fall. The remaining stuffed toys either have a smooth cloth exterior or are plush—a trade term referring to a soft and pliable stuffed toy generally having a furry or velvet-like exterior that may simulate the coat of a living animal.

Although this product group consists of toys both for children's use and for collection or decoration, most stuffed toys are intended for use as children's toys.

Complete stuffed toy figures and skins for such figures are domestically produced. Because stuffed toy animals are often large in size, reduced freight costs are often more important than higher labor costs in encouraging domestic production. Therefore, domestic production is generally concentrated in the largest toys and imports in the smaller sizes. However, the freight cost for skins is a much less important factor than the labor cost, so that there is significant domestic production consisting of stuffing imported skins. In general, imports are said to be comparable in quality to domestically produced stuffed toys.

This provision results from the varied application of duty-free treatment of the subject articles under GSP and CBERA. Korea, the leading foreign supplier, exceeded its competitive need limitations and Taiwan lost its duty free eligibility on July 1, 1985, for the same reason. China, the third largest supplier, is not eligible for any preferential tariff programs. The remaining suppliers are a mixed bag, some having only GSP eligibility and some having that and CBERA. Most of the larger U.S. firms in the stuffed toy industry source from more than one of these countries, some from all seven.

Under TSUS item 737.30, stuffed toys are currently dutiable at a column 1 rate of 5.5 percent ad valorem, column 2 of 70 percent.

Under TSUS item 737.40, filled toys are dutiable at a column 1 rate of 7 percent ad valorem, column 2 of 70 percent.

For the purposes of Customs classification, the term "animate" has traditionally included only animals or humanoid figures (other than dolls) that are predominantly earthly in nature. Nonearthly creatures, robots, machines, and vegetable or mineral objects vested with human or animal features are excluded, as are creatures that are hybrids of two or more earthly creatures.

Imports of the subject articles increased from 38.7 million units in 1980 to 166.7 million units in 1984. As previously stated the top 3 importing countries were Korea (58 percent), Taiwan (27 percent) and China (6 percent). Imports under the GSP were 47.1 million units in 1984. CBERA imports were 600,000 imports in 1984.

Assuming that imports from Korea and Taiwan remain ineligible for duty-free treatment under the GSP during 1986–90 and that China does not gain GSP eligibility during the period, the enactment of the legislation would result in an estimated customs revenue loss of $25 million to $30 million in 1986 and an estimated annual loss of $20 million to $25 million during 1987–90.

TETRAAMINOBIPHENYL

(Section 877)

This section temporarily suspends, through December 31, 1990, the duty on the chemical tetraaminobiphenyl (TAB), provided for in item 404.90 of the TSUS. TAB is imported from West Germany. There is no domestic production.

TAB is an essential raw material used for the production of a high performance fiber called PBI. PBI is a heat-and-chemical-resistant fiber that can be used as a suitable replacement for asbestos. It has a wide range of thermal protective applications such as in flight suits and garments for fire fighters, boiler tenders, and refinery workers. Temporary removal of the import duty on this principal raw material will lower the production cost for PBI fiber and enable the domestic manufacturer to establish a competitive market for products containing PBI.

KITCHENWARE OF TRANSPARENT, NON-GLAZED GLASS CERAMICS

(Section 878)

This section would suspend until December 31, 1989 the column 1 duty on certain transparent, non-glazed, glass ceramic kitchenware. This article is currently provided for in item 534.97 of the TSUS. This suspension is implemented by including in subpart B of part 1 of the Appendix to the TSUS a new item 909.15. The column 2 rate of 40 percent ad valorem on TSUS item 534.97 would remain unchanged by this suspension.

Section 878 would apply to transparent, non-glazed glass ceramic kitchenware having a linear coefficient of expansion not exceeding 10×10^{-7} per Kelvin within a temperature range of 0° centigrade to 300° centigrade. This product description is very specific in order to avoid the application of this duty suspension to a broader range of products. This suspension would apply only to that portion of imports currently entering under TSUS item 534.97 that meet the product description provided for in this section.

Corning Glass Works, the only domestic manufacturer of the product to which section 878 would apply, must also import to supplement its current domestic production. Corning has been advised by the U.S. Customs Service that this product will be reclassified upon the implementation of the Harmonized Code from the current TSUS item 534.97 at a 6.9 percent ad valorem column 1 rate to the Harmonized Code item 7013.10.00 at a 26 percent ad valorem column 1 rate. This reclassification will put a significant financial burden on Corning and its customers. The purpose of this suspension is to ease the transition to the higher tariff. It is the Committee's intention, therefore, that this duty suspension would continue to apply after any reclassification whether effectuated by the implementation of the Harmonized Code or by other means.

Corning is the only U.S. manufacturer of a product which meets the description provided for in this section. This product is commonly known by the trade name VISIONS.

Corning has made a major investment in the United States to manufacture VISIONS. The product was first developed and sold by Corning in France. Corning began producing VISIONS in its Martinsburg, West Virginia facility in 1985. The company is also making additional investments in its Charleroi, Pennsylvania and Greenville, Ohio facilities in connection with VISIONS. Currently, about 640 workers are employed producing and packaging VISIONS in the United States. Approximately 80 full time jobs will be created by the additional investments that are being made.

The annual revenue loss of this suspension, based on information provided by Corning, is estimated to be less than $3.5 million over the life of the proposed suspension based on the 6.9 percent ad valorem duty that currently applies.

HOSIERY KNITTING MACHINES AND NEEDLES

(Sections 879, 880 and 883(a)(11) and (12))

Sections 879 and 883(a)(11) would suspend column 1 duty through December 31, 1990 for hosiery knitting machines, single cylinder fine gauge, and all double cylinder knitting machines (provided for in items 670.16 and 670.18).

In addition, sections 880 and 883(a)(12) would provide for a retroactivity provision on the expired temporary duty suspension which existed under item 912.08 on imports from column 1 countries of single cylinder fine gauge hosiery knitting machines classified under item 670.16 and of double cylinder jacquard hosiery classified under item 670.18. It would provide for duty-free treatment retroactive to September 30, 1985 upon proper request filed with Customs.

Knitting is the process of producing fabric by forming loops of yarn and pulling each newly formed loop through one that has already been made. These operations are performed by hooked needles.

Circular and noncircular knitting machines are used to make hosiery, although the use of the latter type has virtually ceased in the United States.

Circular hosiery knitting machines may be subdivided into two major categories—namely, single cylinder and double cylinder. In turn, single cylinder machines may be classified as either fine or coarse gauge machines. Currently, only single cylinder coarse gauge hosiery knitting machines are manufactured in the United States.

Double cylinder hosiery knitting machines are used to manufacture half-hose for men, women, and children. These machines are fitted with a distinctive double-headed latch needle which is transferred to one or the other of the superimposed cylinders as required, producing a more intricate pattern (including jacquard or three-color combinations) than single cylinder machines.

Single cylinder fine gauge hosiery knitting machines have a column 1 duty of 4.2 percent ad valorem and double cylinder jacquard hosiery machines a 5.1 percent duty. Both have a column 2 rate of 40 percent ad valorem and are eligible for GSP and CBERA.

There are no U.S. producers of the hosiery knitting machines covered by this legislation.

Separate data for different types of circular hosiery knitting and double cylinder jacquard machines are not available. However, imports of the TSUS item covering all circular knitting machines were almost totally from Italy (90%). Canada was the sole source of the TSUS item covering the latter category.

The effect on revenue is not available because volumes of imports are not specifically known. Estimated revenue loss for these items in 1986 would be $980,000.

In addition to the tariff changes for knitting machines, section 880 would suspend the column 1 duty through December 31, 1990, for needles for knitting machines provided for in TSUS items 670.58 and 670.62 under new item 912.28.

There is no longer domestic production of the needles covered in items 670.58 or 670.62.

Latch needles for knitting machines are classified in item 670.58 and are dutiable at a column 1 rate of 10 percent ad valorem and a column 2 rate of $2 per 1,000 plus 60 percent ad valorem. All other needles for knitting machines (except springbeard needles) are classified in TSUS item 670.62 and are dutiable at a column 1 rate of 23 cents per thousand plus 8.2 percent ad valorem and a column 2 rate of $1.15 per 1,000 plus 40 percent ad valorem. Latch needles are eligible for GSP. All subject needles are eligible for CBERA.

Double-headed latch needles, or "links" needles, are used in the manufacture of machine-knitted fabric. These needles each consist of a shank with a hook at each end.

The manufacturing process for needles generally includes a series of up to thirty hand and machine operations, including pressing, swaging, tempering, polishing, and straightening. The duty free treatment is sought as there is currently no domestic production.

There has been no U.S. production of latch needles since 1980, when the Torrington Co. divested itself of its needle operations.

Imports increased from 128 million units in 1980 to 161 million units in 1984. West Germany and Japan accounted for 69 percent of U.S. imports. Imports for double headed latch needles totalled $2.7 million in 1984.

The average annual customs revenue loss that would result from the continuation of the duty suspension as to imported double-headed latch needles would be approximately $2.2 million. This estimate is based on 1984 import levels and on the staged reductions of the tariff rate schedules for 1985–90.

CERTAIN BICYCLE PARTS

(Section 881)

The provision would affect the customs treatment of bicycle parts in two areas. First, it would continue the duty-free treatment of certain parts through December 31, 1990 and would provide for duty-free treatment retroactive to June 30, 1986, upon proper request filed with Customs. Some bicycle parts would be deleted from the enumeration of articles now afforded duty-free entry, while others would be added to that list. With the exception of caliper brakes, none of the parts which would be covered by the amended duty suspension provision are produced on a commercial scale in the United States. This legislation would also add two new temporary provisions to the Appendix to the TSUS to suspend the column 1 rate of duty for (1) bicycle tires and tubes, and rim strips of rubber or plastics under item 912.01 which is effective January 1, 1988 and (2) bicycle chains under item 912.06 through December 31, 1990. Second, the legislation would continue during the same time period the prohibition on the application of the Foreign Trade Zones Act to bicycle component parts unless those parts are reexported, either as parts or as components of complete bicycles.

As originally introduced (S. 584), this provision included a technical amendment designed to clarify the eligibility for duty suspension of caliper brake cable or inner wire and casing therefor. S. 584 would have addressed this matter by adding a broad cross reference to part 3 of schedule 6. However, in order to avoid any possible confusion due to the broad scope of that cross reference, and in lieu thereof, the Committee removed caliper brake cable or inner wire and casing from TSUS item 912.10 (a large basket item covering a variety of bicycle parts) and created a new TSUS number (912.12) limited solely to "cable or inner wire for caliper brakes and casing therefor, whether or not cut to length." A sufficiently precise cross reference to the regular TSUS items normally applicable to these products has also been included. This clarification, like the renewals of TSUS items 912.05 and 912.10, would be retroactive to June 30, 1986.

The purpose of new item 912.01 is to provide duty free entry for imports of bicycle tires, tubes, and rim strips when imported separately and classified in TSUS items 772.48, 772.57, and 732.42 at a Column 1 duty rate of 5 percent, 15 percent and 10 percent ad valorem, respectively, or when imported together as complete bicycle pneumatic tires and classified as such.

Most bicycle parts are made from steel, alloy metals, rubber, or plastics materials. U.S. bicycle manufacturers either produce parts in their plants or purchase from domestic or foreign sources the parts needed to manufacture bicycles. With one exception, certain parts (primarily those for multispeed lightweight bicycles) are not produced in the United States and currently enter duty-free under temporary TSUS items 912.05 and 912.10. Many of the imported parts are said to be a higher quality than similar U.S. parts; U.S. producers of bicycle components face significant direct price and quality competition for all of the parts they supply.

Most bicycle parts, when imported separately, are classified as "parts of bicycles" in TSUS item 732.30 through 732.42. Other components, however, are classified in accordance with general headnote 10(ii) under more specific (often *eo nomine*) provisions elsewhere in the TSUS. The column 1 rates of duty on the subject parts are currently suspended but absent suspension these rates range from approximately 5 percent AVE to 11 percent AVE. Some of the items are GSP eligible and all are eligible for CBERA.

Bicycle tires and tubes, and rim strips of rubber or plastics are classified in TSUS items 732.42, 772.48 and 772.57 at a column 1 duty rate of 10%, 5% and 15% ad valorem respectively. Bicycle chains are classified in item 652.13 at a column 1 duty rate of 6.6 percent ad valorem and in item 652.15 at a column 1 rate of 4.2 percent ad valorem. Column 2 rates are not affected by this legislation.

Two industries produce articles involved in the proposed legislation: the domestic industry manufacturing bicycle components and that producing bicycles. Manufacturers of bicycles also make certain basic parts, such as tubing for frames, handlebars, rims for wheels, and other parts requiring basic bending and pressing operations.

With the exception of caliper brakes, there are no U.S. firms known to be producing on a commercial scale any of the articles which would enter duty-free under this legislation. One firm, Dia-Compe, Inc. a wholly owned subsidiary of Yoshigai-Kikai Co., Ltd., Osaka, Japan, produces caliper brakes. However, all the caliper brakes produced by Dia-Compe are assembled from parts imported free of duty from its parent company. The only product which the firm produces is caliper brakes.

The bicycle component parts industry consists mainly of small businesses, the number of which is believed to have decreased below fifty in 1984; employment was estimated to be about 1,500 in that year.

In 1984, eight firms accounted for virtually all of the domestic output of bicycles. According to their estimates in recent annual reports, Huffy accounted for "in excess of 40 percent" and Murray-Ohio for about 36 percent of U.S. producers' shipments. In 1984, total employment in the bicycle industry amounted to an estimated 5,500 employees.

Complete data on U.S. imports of bicycle component parts are not available; as a result of general headnote 10(ii), certain articles are classified in broad or residual TSUS items covering many other types of articles. Imports of those items for which data are available decreased from $208 million in 1980 to $204 million in 1984. The principal sources of such imports in 1984 were Japan, $88.7 million or 46 percent; Taiwan, $72.3 million, or 35 percent; Italy, $13.7 million, or 7 percent; and the Republic of Korea, $11.7 million, or 6 percent.

A substantial proportion of parts of bicycles provided for in various TSUS items in schedule 7, part 5, subpart C, entered free of duty under TSUS item 912.10 until its expiration on June 30, 1986. Complete separate data are not currently available on the volume of such duty-free imports in 1984. However, partially estimated data for such imports recorded $1.1 million under TSUS item 912.05 (generator lighting sets) and an estimated $60.0 million under item 912.10. In 1984, duty-free imports entering under item 912.10 accounted for 44 percent of total imports dutiable and duty-free, of all parts entered in subpart C, part 5, of schedule 7.

Consumption of parts increased from $226.9 million dollars on 1980 to $236.2 million dollars in 1984. Consumption of bicycles increased from $680.4 million dollars in 1980 to $822.4 million in 1984.

Based on 1984 data, apparent U.S. consumption of caliper brakes was about 3.3 million brakes, 2.3 million of which were supplied by imports. Consumption of bicycle tires and tubes decreased from 11.8 million units in 1980 to 9.5 million units in 1983.

Using several assumptions it is estimated the extension of the FTZ provision would result in a savings of $1.5 million.

The extension of the duty-free status of certain bicycle parts would result in a revenue loss of $5.8 million annually.

1,2-DIMETHYL-3,5-DIPHENYLPYRAZOLIUM METHYL SULFATE (DIFENZOQUAT METHYL SULFATE)

(Section 882)

This section would amend Subpart B of part 1 of the Appendix to the TSUS by adding a new item, 907.24, affecting 1,2-dimethyl-3,5-diphenyl-1-H-pryazolium methyl sulfate (difenzoquat methyl sulfate) provided for in item 408.19 of the TSUS. The column 1 rate would be duty-free through December 31, 1990. The column 2 rate would remain unchanged.

The chemical difenzoquat methyl sulfate is synthetically produced from benzene derivative and other chemicals. It is used as a selective postemergence herbicide for the control of wild oats in barley and wheat.

Elimination of the duty on this herbicide would result in a lower cost of the final product to U.S. consumers according to American Cyanamid Co., the only producer of this herbicide.

The herbicide difenzoquat methyl sulfate is currently classified in a residual "basket" category for herbicides, not artificially mixed, which are provided for in the Chemical Appendix to TSUS item 408.19. Articles entered under item 408.19 are presently dutiable at a column 1 rate of 13.5 percent ad valorem and a column 2 rate of 7 cents per pound plus 48.5 percent ad valorem.

The herbicide is currently eligible for duty-free treatment under GSP and also under CBERA. Since September 1, 1985, imports of this product from Israel may be entered free of duty.

There has been no domestic production in the past 5 years. American Cyanamid holds the patent on this product and produces it only through their subsidiary in Belgium.

In 1984, imports of this herbicide amounted to approximately 540,000 pounds. All of the imports in 1984 came from the Netherlands and were shipped to American Cyanamid.

Based on data provided by an industry source, annual revenue losses are expected to be about $370,000.

MIXTURES OF HOT RED PEPPERS AND SALT

(Section 883(a)(1))

This section extends the duty suspension for certain mixtures of hot red peppers and salt in item 903.60 through December 31, 1990, with duty-free treatment retroactive to June 30, 1985, the date item 903.60 expired, upon proper request filed with the U.S. Customs Service. The duty on such imports was previously suspended from October 24, 1978, through June 30, 1981 and reinstated from July 1, 1981, through June 30, 1985. The only known U.S. importer of pepper mash imports this product from Central and South America.

Mixtures of mashed or macerated hot red peppers and salt, currently provided for in TSUS items 141.77 and 141.98, are often referred to as "pepper mash" and are used in the production of hot red pepper sauce. Pepper mash is made by crushing any of several varieties of hot red peppers and preserving the resulting pulp in salt, usually an 8 percent salt solution, in wooden kegs. The varieties of peppers commonly used in this process include cayenne, tabasco, serrano, and chili. The end product, hot red pepper sauce or "Louisiana hot sauce," is made by adding vinegar to this preserved mixture of macerated peppers and salt.

The mixtures of hot red peppers and salt which are the subject of this legislation are provided for in items 141.77 and 141.98 with column 1 rates of duty of 12 percent and 17.5 percent ad valorem, respectively, and a column 2 rate of duty of 35 percent ad valorem. The column 1 rates were not changed as a result of the Tokyo Round of the Multilateral Trade Negotiations.

The domestic hot sauce industry is comprised of approximately six firms, mostly in Louisiana, which produce hot red pepper sauces from pepper mash, and at least another 30 hot sauce makers scattered around the United States that use ingredients other than hot red peppers. The ingredients used by these other firms usually consist of jalapeno peppers (a hot, green pepper) or an oleo-resin (a synthetic) and tomato sauce mix, and are generally used to make taco or enchilada sauces for Mexican-style foods.

Both taco and enchilada sauces are somewhat competitive with the hot red pepper sauces, especially those lower-priced red pepper sauces made from non-tabasco peppers. Pure tabasco sauce is a higher priced sauce and, according to those firms processing it, a higher quality sauce. The McIlhenny Company produces only tabasco sauce and probably accounts for the bulk of the U.S. production of this article, but it is not known what share of U.S. production of hot sauces is accounted for by that company.

The growers of hot red peppers are concentrated in Louisiana, Mississippi, and Texas. Approximately 4,000 acres are devoted to the production of such peppers in these States. Most of these growers do grow some specialty crops as well as hot peppers.

Data on U.S. production of pepper mash or hot sauces are not available, but it is believed that such production is trending upward. The production of hot sauces is not seasonal but the production of pepper mash, the major ingredient of hot red pepper sauce, follows the seasonal pattern of the hot red pepper harvest during the summer and fall months.

The only known imports of pepper mash in recent years have been of the tabasco pepper variety for the account of the McIlhenny Company. Colombia and Honduras together account for almost two-thirds of McIlhenny's imports; the supplies from Mexico constitute less than one-fifth. U.S. imports from Colombia and Honduras are entitled to duty-free treatment under the GSP.

The column 1 rate of duty on imports of mashed or macerated hot red peppers has been suspended for most of the period since late 1978; thus, there would be no substantial change (loss) in revenue. The estimated loss in revenue would have been $12,000 in 1985.

CANTALOUPES

(Section 883(a)(2))

The proposed legislation would extend the suspension of duty in item 903.65 on fresh cantaloupes entered during January 1 through May 15 through December 31, 1990, with duty-free treatment retroactive to May 15, 1985, the date item 903.65 expired, upon proper request filed with Customs.

Cantaloupes, the most important melons marketed in the United States, are generally used fresh as an appetizer, snack, or dessert, or may be cut into pieces for use in fresh fruit salads. Fresh cantaloupes are nonstorable and generally maintain their quality for only several weeks after harvest. This characteristic makes the marketing of cantaloupes seasonal.

This provision would impose no duties on imported cantaloupes during the period when domestic production is nil.

Cantaloupes are imported with a column 1 rate of duty of 20 percent ad valorem under item 148.10 between August 1 and September 15 and 35 percent ad valorem under items 148.12 or 148.17 the rest of the year. The column 2 rate is 35 percent ad valorem year round. Cantaloupes entered between August 1 and September 15 are eligible for GSP although Mexican cantaloupe imports exceed the "competitive need" limits. All cantaloupes are eligible for CBERA duty-free treatment.

Domestic production increased from 1.2 billion pounds in 1980 to 1.5 billion pounds in 1984. Production during January 1, to May 15 is believed to account for about 5 percent of annual U.S. production.

The cantaloupe harvest is highly seasonal. While the shipping season normally begins in late April or early May for cantaloupes produced in Arizona, California, and Texas, the bulk of domestic shipments are made from June through August.

Cantaloupes are produced commercially in at least 25 States, with more than 90 percent of the crop harvested in California, Texas, and Arizona. Cantaloupes require a long growing season and are susceptible to a number of diseases that limit the areas where they can be grown.

During 1980–84, total U.S. imports of cantaloupes rose irregularly from 170 million pounds in 1980 to 247 million pounds, in 1984.

Data are not separately reported for the period January 1–May 15. However, imports during January 1–May 30 increased from 162.3 million pounds in 1980 to 228.7 million pounds in 1984. On a quantity basis, 88 percent of the cantaloupes imported into the United States during 1980–84 entered during the period January–May. Mexico is by far the leading source of imported cantaloupes, supplying 89 percent of the total annual imports in 1984. Mexico was ineligible for GSP benefits due to its predominant share of total imports.

Assuming 1984 import levels, revenue loss would be about $9 million annually.

CERTAIN WOOLS

(Section 883(a)(3))

This section extends the suspension of duty on coarse wools (defined as finer than 44s but no finer than 46s) in items 905.10 and 905.11 through December 31, 1990. Column 2 rates of duty would be those prescribed by items 306.30 through 306.34. This legislation provides for duty-free treatment retroactive to June 30, 1985, the date these provisions expired, upon proper request filed with Customs.

The system most commonly used in the United States to grade wool is referred to as the count system, which classifies wool numerically according to fineness. Under the count system, mid to upper 60s, 70s, and 80s are fine; low 50s to low 60s are medium; and 30s to high 40s are coarse.

Wool fibers finer than 44s but not finer than 46s are coarse and virtually all domestic consumption of such wool is imported. It is largely used to produce blankets and to a lesser extent fabrics for coats, carpets, and home furnishings.

Wools finer than 44s but not finer than 46s have been eligible for duty-free treatment under temporary tariff provisions since November 8, 1977.

U.S. imports of wools finer than 44s but not finer than 46s had been granted a temporary duty suspension (along with other types of wools) from November 8, 1977 to June 30, 1985. Effective July 1, 1985 the rates of duty as negotiated in the Tokyo round of the Multilateral Trade Negotiations became effective.

Imports of wools covered by this legislation are not subject to control under the MFA, nor are they eligible for duty free treatment under the GSP. Additionally, U.S. imports of such wool from LDDC's are not eligible for preferential duty rates, but they are subject to duty free treatment under the CBERA.

There is no domestic production of these wools.

Imports of the subject wools increased from 6,227,000 pounds in 1980 to 16,747,000 pounds in 1984. More than 80 percent of the total quantity and value of the subject wools was shipped from New Zealand.

If duties on the coarse wools covered by the legislation had been in effect in 1984, revenues would have amounted to 1.7 million.

NEEDLECRAFT DISPLAY MODELS

(Section 883(a)(4))

Section 869(4) would extend the temporary duty-free treatment provided for in items 906.10 and 906.12 through December 31, 1990, to imports from countries entitled to most-favored-nation (MFN) status of needlecraft display models, primarily hand stitched, of completed mass-produced kits. The provision would provide duty-free treatment retroactive to June 30, 1985, the date these provisions expired, upon proper request filed with Customs.

Needlecraft display models are finished replicas of the articles that can be made from needlecraft kits, which a consumer may purchase at retail. The domestic manufacturers of needlecraft kits export the kits principally to Haiti for completion and then import the stitched or worked articles for sale to retailers. The models are used as displays in retail stores to stimulate consumer interest and to promote sales of unfinished kits. In addition, the models allow the consumer to assess the difficulty of the stitching in light of his or her ability.

The models (and kits) represent a variety of articles, including pictures, decorative pillow covers, latch hook rugs, Christmas ornaments and stockings, wall hangings, tablecloths, napkins, and purses. The majority of the models are believed to consist of pillow covers, wall hangings, and Christmas ornaments of needlepoint, crewel embroidery, or counter cross-stitch.

According to industry sources, cost considerations largely preclude the manufacture of models from kits in the United States.

U.S. imports of the subject needlecraft display models from column 1 countries were free of duty from January 27, 1983 to June 30, 1985, when temporary TSUS items 906.10 and 906.12 expired. The MFN rates of duty otherwise applicable to such articles vary from approximately 7 percent ad valorem to 25 percent ad valorem.

There are no MFA quotas on these kits. Only 3 of the 23 articles covered by this legislation are eligible for GSP or CBERA.

U.S. production and exports of needlecraft kit models for commercial sale are believed to be negligible. However, some small retailers specializing in needlecraft have models stitched by their employees during work hours or by persons working in their homes. Compensation for the home workers may be in the form of either monetary payment or the return of the articles after their use for display purposes.

There is no commercial production of the completed display models in the United States because such production is labor intensive and, therefore, costly. Industry sources estimate that about 80 percent of the models are stitched in Haiti, primarily because of its available labor force, low wage rate (about $0.70 per hour), and proximity to the United States.

The National Needlework Association (TNNA) estimates that about one-half of its 425 member firms in the United States manufacture needlecraft kits. These producers vary from small firms specializing in only one type of needlework, such as crewel, cross-stitch, or needlepoint kits, to larger firms which produce a variety of needlecraft articles. Five producers together account for roughly three-fourths of U.S. production of needlecraft kits.

Several kit producers report that they sell their completed models to retailers at a loss of almost 20 percent, in anticipation that the models will increase kits sales. Some producers require retailers to purchase a minimum number of kits of a given design before the model can be purchased. However, the smaller producers are often unable to offer models to retailers because of the expense of having the models stitched and carrying them in inventory.

U.S. imports of needlecraft display models are not separately reported since imports of articles covered by TSUS items 906.10 and 906.12 are statistically reported under the 23 Schedule 3 provisions enumerated therein. However, TNNA estimates that the value of imports of these models amounts to $5 million to $10 million annually. About 5 firms account for 75 to 85 percent of the imports.

All but a small number of the imported models are made from U.S.-produced materials (e.g., yarn, fabric, matting, and thread). The models are stitched abroad and are then imported into the United States where framing or other finishing is completed.

Since data on the specific types of needlecraft kit models being imported are unavailable, it is impossible to provide a precise estimate of the potential revenue impact of this legislation; many different MFN rates of duty would apply to such articles, since 23 TSUS items are involved. However, on the basis of an estimated value of imports of these models of between $5 million and $10 million annually, the provision would be likely to result in an annual loss of revenue of $790,000 to $1.6 million.

TRIPHENYL PHOSPHATE

(Section 883(a)(5))

This section would extend the temporary column 1 suspension of duty for triphenyl phosphate under item 907.01. The extension would be effective through December 31, 1990, and duty-free treatment would be retroactive to September 30, 1985, the date the provision expired, upon proper request filed with Customs.

Triphenyl phosphate (TPP) is a colorless, odorless crystaline powder used principally as a fire-retarding agent and as a plasticizer for cellulose acetate and nitrocellulose used in the manufacture of photographic and other films. TPP functions to reduce the flammability of these films, as well as increasing the flexibility, making them safer and easier to handle. More than 75 percent of all TPP produced is used in these applications.

The market for the major end-uses for TPP, nitrocellulose films and cellulose acetate, has been declining for several years. Domestic manufacturers of TPP have virtually abandoned production of the product. Since imports of TPP supply most, if not all, domestic open-market demands, U.S. importers contend it would make sense to remove any impediment to access to the only remaining source of supply.

TPP is currently classified under TSUS item 409.34 with a column 1 rate of duty is 0.1 cents per pound plus 17.7 percent ad valorem. The column 2 duty rate is 7 cents per pound plus 57 percent ad valorem. Imports may be eligible for duty-free treatment under GSP and CBERA.

Separate production data are not available for TPP. However, industry representatives estimate that total domestic production during 1980–84 was substantially less than 10 million pounds annually.

Monsanto Company, St. Louis, Mo., and Eastman Kodak Company, Rochester, N.Y., were the only producers of TPP in 1981. Monsanto permanently ceased production of TPP in 1981. Borg-Warner Corp., Morgantown, W. Va., and FMC, Nitro, W. Va., also have the ability to produce TPP, but neither have reported production of this product during 1980–84 and both indicate that they have no immediate interest in this market. It is estimated by industry observers that most of Eastman Kodak's production is consumed captively in its photographic film manufacturing operations. U.S. open-market demand for TPP is likely to be satisfied principally by imports in the future.

Separate import statistics on TPP were not available prior to 1984 when TPP was broken out as a statistical classification in item 409.3425. Imports of TPP in 1984 amounted to about 1.1 million pounds, valued at $764,000. The United Kingdom supplied 82 percent of total U.S. imports of TPP in 1984, while the Netherlands and South Korea each supplied about 8 percent.

In 1984, the only year for which import data are available, the calculated revenue lost as a result of the current duty suspension legislation amounted to $198,354. Since the U.S. market for TPP is a declining market, substantial increases in imports are unlikely and total revenue losses as a result of this legislation are not expected to exceed $110,000 per year in the near future.

ISOMERIC MIXTURES OF ETHYLBIPHENYL

(Section 883(a)(6))

This section extends the temporary suspension of the column 1 rate of duty for isomeric mixtures of ethylbiphenyl under item 907.14 through December 31, 1986, and provides for duty-free treatment retroactive to June 30, 1985, the date this provision expired, upon proper request filed with Customs.

These mixtures consist of the positional chemical isomers, 3-ethylbiphenyl and 4-ethylbiphenyl, which are produced synthetically from petroleum. These chemicals are used primarily as heat transfer agents in the production of various plastics resins (e.g., polystyrene).

Isomeric mixtures of ethylbiphenyl are classified under TSUS item 407.19 with a column 1 rate of duty of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any individual component of the mixture. The column 2 rate of duty is 7 cents per pound plus 43.5 percent ad valorem, but not less than the highest rate applicable to any component material. Imports of the subject mixtures are eligible duty-free treatment under the GSP and CBERA. Under the U.S.-Israel Free Trade Area Implementation Act of 1985, imports are dutiable at the column 1 rate but are scheduled to be staged over a 5-year period to free.

There is no U.S. production of ethylbiphenyl.

Dow Chemical estimates that imports of the isomeric mixtures of ethylbiphenyl declined from a high of 458,000 pounds, valued at $453,000, in 1981 to 290,000 pounds, valued at $287,000, in 1985. Imports for this mixture during 1986 are estimated to be 400,000 pounds, valued at about $400,000.

Estimated annual revenue loss is expected to be about $735,000.

SULFAPYRIDINE

(Section 883(a)(7))

This section would extend the suspension of the column 1 duty rate for sulfapyridine (TSUS item 907.17) through December 31, 1990, and duty-free treatment would be retroactive to December 31, 1985, the date this provision expired, upon proper request filed with Customs.

Sulfapyridine, is classified in a group of chemicals known as anti-infective sulfonamides.

At one time sulfonamides were widely used in the treatment of infections. However, the development of resistance in formerly susceptible organisms has greatly limited the clinical usefulness of these drugs. In addition, substantial quantities have been used as growth promoters in animal feeds. Use of sulfapyridine in animal feeds, as approved by the FDA, accounts for about 15 to 30 percent of annual consumption. The remainder of annual consumption is used in the production of other sulfa drugs, particularly sulfasalazine and sulfadiazine.

Sulfapyridine is classified in TSUS item 411.27. The current column 1 duty rate is 11.6 percent ad valorem and the column 2 rate is 7 cents per pound plus 128.5 percent ad valorem.

Imports are not eligible for duty-free treatment under GSP but are eligible for CBERA.

Sulfapyridine is not presently produced in the United States. American Cyanamid Co. and Napp Chemicals Inc. produced sulfapyridine until 1980–81. Industry sources maintain that sulfapyridine cannot be substituted in the production of certain sulfa drugs, particularly sulfasalazine.

During 1980–1982 imports of sulfapyridine ranged from about 106,000 pounds to about 70,000 pounds. According to industry sources, in 1983, the first year of the suspension of duty on sulfapyridine, imports amounted to about 120,000 pounds. Imports increased to about 145,000 pounds in 1984. The current market price for sulfapyridine is approximately $11.40 to $12.30 per pound.

Revenue losses are expected to total $687,000 for the period 1987–1988.

SYNTHETIC RUTILE

(Section 883(a)(8))

This section would suspend until December 31, 1990, the column 1 duties on synthetic rutile, provided for in item 603.70 of the TSUS, by amending item 911.25 in part 1B of the Appendix to the TSUS to extend the effective period. The column 2 rate of 30 percent ad valorem remains unchanged. Duties on synthetic rutile were suspended almost continuously between October 26, 1974 and

June 30, 1982, when the last suspension expired. The duty suspension would be effective with respect to articles entered, or withdrawn from warehouse for consumption 15 days after enactment of this legislation.

Synthetic rutile is derived from ilmenite by chemically extracting iron and other impurities from the ilmenite. Ilmenite, an ore of titanium, contains about 55 percent titanium dioxide. The upgrading processes result in a product with a titanium dioxide content approaching that of natural rutile, also an ore of titanium, which contains about 96 percent titanium dioxide. Since natural rutile is much more costly than ilmenite, increasing quantities of ilmenite are being upgraded to produce synthetic rutile.

In 1984, almost 84 percent of rutile was used to make the titanium dioxide pigments essential to the production of paint, paper, rubber, and plastics. In 1984, U.S. production of these pigments amounted to 800,000 short tons.

Synthetic rutile is classified under TSUS item 603.70, a residual provision for other metal-bearing materials of a type commonly used for the extraction of metal or as a basis for the manufacture of chemical compounds. Current column 1 rate of duty is 5 percent ad valorem.

Imports of synthetic rutile are eligible for preferential treatment under the Generalized System of Preferences (GSP) and are also eligible for duty-free treatment under the Caribbean Basic Economic Recovery Act (CBERA) and when imported from Israel.

Kerr-McGee Chemical Corp., the only known U.S. producer of synthetic rutile, has produced this material at its plant in Mobile, Alabama since 1977. In 1978 and 1979, Kerr-McGee expanded the plant's capacity to 110,000 short tons per year. The firm intends to expand capacity by another 15 percent by 1989. Total employment at the Mobile plant is 125 people.

Over half of the Mobile plant's production is used to satisfy the raw material requirements for Kerr-McGee's titanium dioxide pigment plant in Hamilton, Mississippi. Production information is confidential, but output has expanded during the last two years.

Annual revenue loss based on 1984 imports of synthetic rutile, valued at $3.8 million, is estimated at approximately $224,790, based on 5.9 percent ad valorem duty.

CERTAIN CLOCK RADIOS

(Section 883(a)(9))

This section would renew the previous suspension of the column 1 rate of duty on certain clock radios by striking out "Dec. 31, 1986" in TSUS item 911.95 and inserting in lieu thereof "Dec. 31, 1990." The proposed legislation would allow duty-free treatment retroactive to December 31, 1986 upon proper request filed with Customs.

The clock radios which are the subject of this bill are those solid-state (tubeless) radio receivers which incorporate a clock or timing mechanism within the same housing (or casing), hereinafter referred to as "clock radios." These radios may operate from batteries or electric current and are principally for consumer use, in that they are designed principally to receive radio signals from the entertainment broadcast bands. However, such bands are not restricted; the radios may receive on other bands, such as weather, police or fire, and aviation.

The clock portion of the radio may simply display time or may also sound an audible alarm. However, in most clock radios, the clock also controls the radio function by turning the radio on or off at preset times or intervals. Many models also provide for the control of external electric devices such as coffee pots. Such radio timers may be used to start the morning coffee as well as wake the occupant.

Two duty rates currently apply to imported clock radios having analog clocks or timers. The first duty rate is on the radio portion of the apparatus, while a different rate is applied to the clock or timer mechanism. If a clock radio incorporates an analog clock with movements, the clock portion is dutiable separately in accordance with headnote 5, part 2E of schedule 7 of the TSUS, which specifically provides for such constructive segregation. Clock radios with solid-state clocks or timers, however, are treated as an entirety for purposes of the duty suspension.

Solid-state radio receivers (including those with solid-state clock or timer mechanisms) are dutiable under TSUS item 685.14, covering entertainment broadcast band receivers not for motorvehicle installation, at a column 1 rate of 6 percent ad valorem. The column 2 rate of duty, applicable to Communist controlled or dominated nations listed in general headnote 3(d), is 35 percent ad valorem on the unit, or on the radio part of a clock radio incorporating an analog clock or timer.

Merchandise imported under item 685.14 is eligible for duty-free entry under the provisions of the Generalized System of Preferences (GSP). However, products of Hong Kong, Singapore, Taiwan, and the Republic of Korea are not currently eligible for GSP treatment because these countries have exceeded the "competitive need" limitations set forth in section 504 of the Trade Act of 1974.

Products of Israel classified in TSUS item 685.14 are dutiable at the rate of six percent ad valorem, which will be reduced in stages to a rate of free. Finally, products of designated CBERA countries enter free of duty.

There is currently no known U.S. industry producing clock radios.

Total U.S. imports of clock radios increased from $108.7 million in 1981 to $196.9 million in 1984, before dropping to $178.5 million in 1985. In 1985, the largest foreign sources of clock radios were Hong Kong ($77.6 million) and Malaysia ($52.8 million). The unit value of U.S. imports fluctuated during 1981–85 but averaged $13.00 over the period.

Estimates of lost customs revenues for 1987–89 from the proposed duty-free entry of the subject clock radios average $8,000,000 per year.

MACHINES DESIGNED FOR HEAT-SET, STRETCH TEXTURING OF CONTINUOUS MAN-MADE FIBERS

(Section 883(a)(10))

This provision would extend the temporary duty-free treatment provided for in item 912.07 for column 1 imports of machines designed for heat-set, stretch texturing of continuous manmade fibers until December 31, 1990, and would allow duty-free treatment retroactive to December 31, 1985, when this provision expired, upon proper request filed with Customs.

Texturing is the process of crimping, imparting random loops, or otherwise modifying continuous filament yarn to increase cover, resilience, abrasion resistance, warmth, insulation, moisture absorption, or to provide a different surface texture. The stretch/heat-set machinery that would be affected by this proposed legislation uses a "false-twist" method for texturing.

The false-twist method involves stretching, twisting, heat-setting, and untwisting of the yarn. The result is a bulkier, more elastic yarn.

According to a 1978 survey, 94 percent of the texturing machinery in place at that time (measured in thousands of spindles) was of the false-twist type. Since 1978, nearly all of the machines using other methods (gear crimping, edge crimping, knit-de-knit, and stuffer box) have been replaced by false-twist machines.

Duty-free treatment under item 912.07 was originally granted principally because the U.S. yarn industry was unable to locate a domestic company that manufactured machines designed for heat-set, stretch texturing of continuous manmade fibers.

Machines for stretch/heat-set texturing of continuous manmade fibers are provided for in TSUS item 670.06 with a column 1 rate of duty of 4.2 percent ad valorem and a column 2 rate of 40 percent. The machines are eligible for duty free treatment under GSP and CBERA and the U.S.-Israel Free Trade Agreement.

During the period 1974–83 U.S. firms did not produce heat-set, stretch texturing machines for general consumption. Two domestic companies have begun production of these machines since 1984. Enterprise Machinery & Development Co., located in New Castle, Del., produces heat-set and air-jet machines, and Thieler Corp. International (TCI) of Gastonia, N.C. reportedly produces a range of heat-set texturing machinery. According to TCI officials, domestic sales of these products ranged between $1 and $2 million during 1984. Sales data for Enterprise Machinery & Development Co. are not available.

Data as to amount of imports are not specifically available as these items are entered in a category that includes other types of textile machines.

If this provision were enacted the average annual customs revenue loss that would result would be approximately $2.6 million. This estimate is based on 1984 import levels and on the staged reductions of the tariff rates scheduled for 1987–90.

SMALL TOYS

(Section 883(a)(13))

This section would extend the temporary suspension under item 912.20 of the column 1 rates of duty on certain enumerated small toys and games (valued not over 5 cents per unit) and jewelry (valued not over 1.5 cents per piece) through December 31, 1990. This provision provides for duty-free treatment retroactive to December 31, 1986, the date item 912.20 expired, upon proper request filed with Customs.

The subject articles consist of small or miniature playing cards, puzzles, games, balls, models, dolls, toy animals, toy musical instruments, magic tricks, practical joke articles, confetti, paper spirals and streamers, and noisemakers valued not over 5 cents per unit. This value limitation was adopted in order to limit the scope of the provision to toys for bulk vending machines. Also included is costume jewelry valued not over 1.5 cents per piece, including rings, earrings, bracelets, necklaces, key chains, pendants, and similar articles of personal adornment. Most of these goods are made from plastics, although they can be of other materials.

The subject articles are provided for in various TSUS items in parts 5D, 5E, and 6A of schedule 7 of the TSUS. Column 1 rates vary from 2 percent to 12.7 percent ad valorem. All the articles, except dolls classified in TSUS item 737.24, are currently eligible for duty-free entry under the GSP; all are eligible for duty-free entry under the CBERA. Imports of these articles from Israel, except for those classified in TSUS items 735.10, 737.15, 737.40, 737.60, enter free of duty pursuant to the U.S.-Israel Free Trade Area Agreement. Imports from Israel under items 735.10, 737.15, 737.40, and 737.60 are dutiable at the special reduced rates for these items.

No U.S. firms regularly produce the subject articles. Domestic production is negligible.

The National Bulk Vendors Association has estimated that imports of small toy and novelty items for bulk vending machines averaged $7 million to $10 million annually during 1981–85. This average represents a decline in imports of these goods in spite of the duty-free treatment, in effect since early 1983; annual imports were an estimated $10 million to $15 million during 1977–81.

Estimated revenue losses would be between $500,000 and $1 million per year.

STUFFED DOLLS, CERTAIN TOY FIGURES AND THE SKINS THEREOF

(Section 883(a)(14))

This provision would extend through December 31, 1990, the temporary duty suspension applied under items 912.30, 912.34, and 912.36 to imports of stuffed dolls with or without clothing, skins for stuffed dolls, stuffed or filled toy figures of inanimate objects and skins for toy figures classified in TSUS item numbers 737.23, 737.47 and 737.51 respectively. This provision allows for duty-free treatment retroactive to December 31, 1985, the date these items expired, upon proper request filed with Customs.

Stuffed dolls are representations of human beings and have a textile exterior filled with a stuffing material, such as shredded textile fabric. These dolls, generally known as rag dolls in the toy trade, are either one-piece entirely stuffed dolls or dolls having a stuffed body with a hard head and extremities, usually of plastic.

Stuffed doll production is highly labor intensive; pieces must be hand-cut and sewn to produce the doll skin.

Stuffed or filled toy figures of inanimate objects either have predominantly nonhuman or nonearthlike features or are hybrids of more than one earthly creature. Stuffed or filled toy animals (earthly creatures) are excluded from this category. Stuffed or filled toy figures of inanimate objects can range from small inexpensive curiosities to larger-than-life-size creatures and characters costing many hundreds of dollars.

As with stuffed dolls, there is little domestic production of stuffed or filled toy figures of inanimate objects. Had these toys become popular a decade ago, a residual domestic industry might have produced them profitably in the larger size ranges (as is the case with stuffed animals), despite migration of other production to lower-wage countries. However, since inanimate figures have become popular only within the last several years, and remain concentrated in the smaller and medium size ranges, they have been sourced almost exclusively from abroad.

Doll and toy skins are the outer covering of a doll or toy or the unstuffed torso (basically the unstuffed doll or toy). In addition, a doll or toy having the arms, legs, or any incidental appendages filled or stuffed and the main portion of the body (the torso) unfilled would be considered a skin for Customs purposes.

The production of skins is highly labor intensive, requiring hand cutting and sewing. There is no known commercial production in this country of doll skins, negligible production of skins for toy figures of inanimate objects, and only minor production of skins for toy figures of animate objects (which is concentrated in skins for the largest toys).

Industry sources maintain that the production of these products is so highly labor intensive that the U.S. toy industry has resorted to sourcing almost exclusively from foreign production facilities. Thus, any duty is an unnecessary addition to the final cost to the consumer. In addition, these sources assert that the duty suspension of imports of skins would encourage importers and manufacturers to finish the dolls and toys in the United States.

The subject articles are dutiable at rates ranging from 9.6 percent ad valorem to 13.4 percent ad valorem. All are eligible for duty free treatment under CBERA and GSP. Although products of Hong Kong, Taiwan and ROK are excepted in a few cases.

U.S. production of stuffed dolls increased from $4.8 million in 1980 to $44.9 million in 1984. Stuffed or filled toy figures of inanimate objects increased from less than $1.0 million in 1980 to $2.0 million in 1984. Doll skin production was nonexistent and toy skin production was less than $1.0 million throughout the period.

The twenty largest firms account for the bulk of domestic doll and stuffed toy production.

Nearly all domestic producers, including all the major firms, import to some extent; their activities range from the importation of skins to significant investment in foreign production facilities for supplying both U.S. and foreign markets. There is no known U.S. production of skins for stuffed dolls, and very little production of any of the remaining products except skins for stuffed toy animals. Some U.S. manufacturers produce skins domestically for the largest stuffed toy animals or the very high priced smaller animals as part of their overall U.S. production of the completed animals. More often, however, the skins are imported. It is not uncommon for those producers importing parts of finished stuffed dolls and toy animals to export the production equipment, particularly cutting and sewing machines, to their overseas facilities.

Imports of all categories covered by this legislation increased markedly in the period 1980–1984. Units imported increased from 1980 to 1984.

Assuming that imports of stuffed dolls from Hong Kong and Taiwan and of toy figures of inanimate objects and toy skins from Korea remain ineligible for duty-free treatment under the GSP during 1987–90, the enactment of the legislation would result in an estimated loss of customs revenues of $15 million to $20 million annually.

UMBRELLA FRAMES

(Section 883(a)(15))

This provision would renew the temporary suspension of MFN duties under item 912.45 on frames for hand-held umbrellas, chiefly used for protection against rain, by changing the termination date from December 31, 1986, to December 31, 1990. This provision would provide duty-free treatment retroactive to December 31, 1986, the date item 912.45 expired, upon proper request filed with Customs.

Umbrella frames and parts, which are not produced in the United States, were imported primarily from Taiwan and entered the United States duty-free under the provisions of the GSP. When Taiwan lost GSP eligibility on March 30, 1984, under the so-called "competitive need" limitations, the applicable rate of duty became the column 1 rate, since reduced to 12 percent ad valorem.

Umbrella frames and skeletons of metal are classified in TSUS item 751.20, covering metal parts of umbrellas, walking sticks, canes, and other articles. The duty suspension, under item 912.45 in the Appendix to the TSUS, covers umbrella frames in one of the two statistical reporting numbers for umbrella frames and skeletons which is item 751.2005 for frames for hand-held umbrellas chiefly used for protection against rain (TSUS item 751.2015 provides for all other frames and skeletons).

Articles classified in TSUS item 751.20 are eligible for duty-free entry under the provisions of the GSP. The current column 1 rate of duty under TSUS item 751.20 is 12 percent ad valorem; no further reductions are scheduled. These articles are eligible for duty-free entry under the CBERA if imported from beneficiary countries. The rate for imports of such products from Israel is 4.8 percent ad valorem.

There is no domestic production of the type of umbrella frames covered by this legislation.

Imports of frames for hand-held rain umbrellas increased, in terms of both quantity and value, during the period 1980–84. In terms of quantity, imports increased from approximately 1.2 million units to nearly 1.4 million units; in value, imports increased from an estimated $779,000 to $3.8 million. In 1984, Taiwan supplied 97 percent of total imports, distantly followed by Thailand.

Based on estimated 1984 imports of these articles of $3.8 million, the continued suspension of the duty of 12 percent ad valorem would result in an annual loss of U.S. customs revenues of approximately $456,000.

CRUDE FEATHERS AND DOWNS

(Section 883(b)(1))

This section would extend the existing suspension of duty on crude feathers and downs under items 903.70 and 903.80 through December 31, 1990 and applies to articles entered after December 31, 1987. The current provision expires December 31, 1987.

TSUS items 903.70 and 903.80 (and the corresponding schedule 1 item—186.15) cover feathers and downs, whether or not on the skin, crude, sorted (including feathers simply strung for convenience in handling or transportation), treated, or both sorted and treated, but not otherwise processed.

The feathers and downs which are the subject of this legislation are provided for in item 186.15, with a column 1 rate of duty of 7.5 percent ad valorem and a column 2 rate of duty of 20 percent ad valorem.

The current rates under the "Special" rates of duty are free for imports of feathers and downs from developing countries under the Generalized System of Preferences, from countries provided for under the Caribbean Basin Economic Recovery Act and from Israel.

The suspension was enacted in 1975 to correct an anomaly in the TSUS in that certain feather- and down-filled garments were dutiable at seven percent ad valorem while feathers and downs, the principal input, were dutiable at 15 percent ad valorem.

Almost all domestically produced feathers and downs are obtained as a by-product of raising chickens, turkeys, ducks, and geese for meat. U.S. poultrymen, except those raising ducks and geese, give relatively little consideration to the price of feathers and downs in determining the size of their flocks, as the price for chicken and turkey feathers is quite low. At current price levels, the sale of waterfowl feathers and downs appears to provide a significant source of income for domestic duck and goose producers. The bulk of chicken feathers are collected at broiler-processing plants in the Southeast; most of the waterfowl feathers and downs are collected at duck-processing plants on Long Island, N.Y. and at goose-processing plants in the Midwest. A small quantity of feathers and downs is salvaged annually from wild pheasants and ducks.

U.S. production of feathers and downs affected by this legislation is estimated to have been about 15 million pounds annually in recent years. The bulk of such production is of chicken feathers. The total also includes an estimated three million to five million pounds of waterfowl feathers and downs; the bulk of which is from ducks, with U.S. production of goose feathers and downs estimated at less than 0.5 million pounds annually. A small amount of feathers from pheasants is produced. As the prices of different types of feathers and downs vary greatly, no value can be reasonably estimated for domestic production.

U.S. imports of feathers and downs decreased from 17 million pounds, valued at $74 million, in 1981 to 11 million pounds, valued at $51 million, in 1982 then rose to 19 million pounds, valued at $77 million, in 1984. Such imports declined slightly to 18 million pounds, valued at $65 million, in 1985. Virtually all U.S. imports consist of waterfowl feathers and downs which are largely imported in the unprocessed and crude state. Most are baled and shipped in the unprocessed state because if feathers and downs are baled after being cleaned they must be reprocessed to regain their bulk, thus adding an additional expense.

China, during 1981–85, generally was the leading U.S. supplier of feathers and downs in terms of quantity. Such imports consisted mainly of uncleaned feathers.

France generally was the leading U.S. supplier of feathers and downs in terms of value during 1981–85. Such imports from France consisted mainly of downs.

Based on the current rates of duty on crude feathers and downs and on the 1985 level of imports, the estimated annual loss of revenue would be approximately $5 million.

MENTHOL FEEDSTOCKS

(Section 883(b)(2))

This section extends the current suspension, under item 907.13, of the column 1 rate of duty for certain menthol feedstocks (which expires on December 31, 1987) through December 31, 1990.

The menthol feedstocks covered by this provision are mixtures of synthetic organic chemicals produced from m-cresol. These feedstocks, which are used to produce two menthol isomers, *l*-menthol and *dl*-menthol, are crude mixtures of all eight optical isomers of menthol. These mixtures have no other commercial use in the United States.

The purpose of this continued duty suspension is to help preserve the American menthol industry by allowing it to remain competitive with foreign manufacturers that receive protection through government subsidies.

Mixtures of optical isomers of menthol are classified under item 407.19 with a column 1 rate of duty of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any individual component of the mixture. The column 2 rate of duty is 7 cents per pound plus 43.5 percent ad valorem, but not less than the highest rate applicable to any component material. Imports of the subject mixture are duty-free under the GSP and CBERA. Under the U.S.-Israel Free Trade Agreement, imports of this product from Israel are dutiable at the column 1 rate of duty, but will be staged over a 5-year period to free.

There are no U.S. producers of these chemical mixtures.

Industry sources estimate that imports of this product declined from $3.0 million in 1981 to $2.4 million in 1985.

Expected revenue losses would be about $350,000 per year.

FLECAINIDE ACETATE

(Section 883(b)(3))

The purpose of this provision is to extend the existing duty suspension provision on flecainide acetate under TSUS item 907.21, which expires on December 31, 1987, until December 31, 1990. The imported product affected by this provision is a drug used to treat patients who have suffered mild heart attacks. There are no current domestic producers of this product, and the Committee believes it is appropriate to continue the suspension of duty.

O-BENZYL-P-CHLORIDE

(Section 883(b)(4))

This section extends the duty-free treatment of o-benzyl-p-chlorophenol under TSUS item 907.23 for an additional three-year period.

o-Benzyl-p-chlorophenol is a broad spectrum biocide. It is commonly used as the active ingredient in cleaning solutions and disinfectants, and continues to be the only known biocide that effectively kills mycobacterium tuberculosis—the bacteria causing TB. It is widely used in the health industry, particularly by hospitals, emergency treatment centers, and nursing homes, where control of this bacteria is important to the maintenance of a hygienically clean environment.

Mobay Corporation of Pittsburgh, Pennsylvania, imports this chemical from its parent company in Germany and markets it in the United States.

Extending the duty suspension on o-benzyl-p-chlorophenol will not harm American industry since there are no domestic producers of the chemical. U.S. demand is satisfied entirely from abroad. In addition, an extension will continue to effect cost savings for the end user.

2-(4-AMINOPHENYL)-6-METHYLBENZOTHIAZOLE-7-SULFONIC ACID

(Section 883(b)(5))

This section extends until December 31, 1990, the existing temporary duty suspension on imports of dehydrothiotoluidine sulfonic acid (DSA). DSA is a chemical intermediate used primarily for production of dyes used for paper. Primary uses are for coloring bathroom tissues, paper towels, paper napkins, facial tissues, stationery, and business forms. There are no known domestic suppliers for this intermediate since the discontinuation of production by DuPont at the end of 1979. All current imports come from Europe. DSA is a major component and a significant cost factor in U.S. paper dye production.

PART III. EFFECTIVE DATES

EFFECTIVE DATES

(Section 894)

This section identifies effective dates for the provisions in Title VIII.

In general, except where noted, the amendments would apply with respect to articles entered on or after the 15th day after the date of the enactment of this act. For purposes of this section, the term "entered" means entered or withdrawn from warehouse for consumption, in the Customs territory of the United States.

In the sections where retroactive application has been provided, the entry of these articles would be liquidated or reliquidated as though such entry had been made on the 15th day after the date of enactment of this act. This would occur after proper request is filed with the Customs officer concerned on or before the 180th day after the date of the enactment of this act. For purposes of this section the term "entry" includes any withdrawal from warehouse.

SUBTITLE B. MISCELLANEOUS PROVISIONS

THE W.M. KECK OBSERVATORY PROJECT, MAUNA KEA, HAWAII

(Section 895)

Section 895 would allow certain specified articles to be imported duty free for use in the construction of an optical telescope for the W.M. Keck Observatory Project in Mauna Kea, Hawaii. These articles would include the telescope structure, or frame, the observatory domes, and the primary mirror blanks.

The provision would not eliminate or change the current TSUS rates of duty under which the articles would otherwise enter. Instead, it would grant a special exemption from the applicable tariff rates for the articles specified above. The exemption would apply to the Keck Observatory Project only.

The provision further provides for the refund of any duty that may have been paid on any of the specified articles before enactment.

The Keck Observatory will house a ten-meter reflecting telescope with infrared capabilities that will be the most powerful optical telescope in the world. The telescope will consist primarily of an observatory dome, primary mirror blanks, and a telescope structure.

The observatory dome will be a 120-foot diameter steel, hemispherical structure. Such domes typically enclose telescopes; therefore, they also contain moving shutter doors which permit the telescope to view the sky. Domes are generally built in sections. Structural steel shapes are cut into various configurations, attached to steel trusses, and welded together.

The mirror blanks are made of a special "zero expansion" ceramic material. Although the material is not glass, it has both glass-like and crystalline properties. It has such low thermal expansion rates over a wide temperature range that precision parts made of it are not subject to changes resulting from alterations in temperature. It is therefore an ideal mirror substrate mount for astronomical and infrared telescopes because changes in the reflector caused by temperature fluctuations would impair the quality of observations. Because of the difficulty of using a ten-meter mirror blank, the designers of the Keck telescope have developed mosaic of 36 hexagonal mirror segments only 1.8 meters in diameter.

The telescope structure is a high precision space frame which supports the primary mirror and provides ultra-precise movement to point the optical system to selected areas in the sky.

The Keck telescope will have a resolution three times that of any other telescope in the world. It will be used to view distant galaxies and will be able to collect enough light from them to determine their red-shifts, a measure of astronomical distance. Other uses include direct imaging in thermal infrared; thermal infrared spectroscopy; wide field imaging at optical and infrared wavelengths, spectroscopy and polarimetry of single objects and other experiments to discover the origin of stars, planets, and galaxies.

The steel observatory domes would be classified under TSUS item 653.00, which pertains to certain fabricated products of iron or steel such as hangars, buildings, other structures, and parts of structures. The column 1 rate of duty is 5.7 percent. The column 2 rate under item 653.00 is 45 percent ad valorem.

The articles covered under item 653.00 are currently eligible for duty-free treatment under the GSP (for all countries except the Republic of Korea), the Caribbean Basin Economic Recovery Act, and the U.S.-Israel Free Trade Area Act.

The telescope structure or frame and primary lens blanks are both classified under item 708.65 (frames, mountings, and parts of telescopes) and are dutiable at the rate applicable to the article of which the frames and mountings are part. In this case, it would be the rate applicable to item 708.61 (telescopes designed for use with infrared light). The column 1 rate of duty is 2.2 percent. The column 2 rate under item 708.61 is 35 percent ad valorem.

The articles covered under item 708.61 are currently eligible for duty-free treatment under the GSP, the CBERA, and the U.S.-Israel Free Trade Area Act.

Enactment of this legislation would result in a loss of customs revenues of about $610,000, based on the 1986 rates of duty under TSUS items 653.00 and 708.65 applied to the articles specified in the provision.

EXTENSION OF FILING PERIOD FOR RELIQUIDATION OF CERTAIN ENTRIES

(Section 896)

This section would permit, upon request filed with Customs on or before 90 days after enactment, the liquidation of any article in TSUS item 687.70 that was entered on or after March 1, 1985, and before November 6, 1986, as if the entry had been made on November 6, 1986.

Section 308 of the Trade and Tariff Act of 1984 permitted the President to proclaim tariff reductions and modifications with regard to certain high-technology products, including transistors. However, the TSUS item number for transistors was erroneously specified in the Act as 587.70, rather than 687.70, preventing the intended duty reduction. Section 1887 of the Tax Reform Act of

1986, Public Law 99-514, corrected this technical error and provided for the reliquidation, upon request, of duty entries made between March 1, 1985, and 15 days after the effective date of the bill, if the request was made within 90 days of the effective date.

A number of companies that imported transistors that were eligible for reliquidation and refund of duties under the 1986 law were given no notice of the provision and were unaware of the filing deadline until after the deadline has passed. The provision would allow any such firm to obtain reliquidation as if it had made the original deadline.

SUGAR DRAWBACK

(Section 897)

Currently, section 313 of the Tariff Act of 1930 provides for drawback (refund) of customs duties paid on (a) articles imported for manufacturing into other articles for export, (b) exported articles substituted for like imported ones, (c) articles not conforming to specifications, (d) certain exported spirits and medicinal preparations, (e) imported salt used to cure fish and meats for export, (f) materials used to produce vessels for foreigners, (g) articles exported in the same condition as imported, and (h) jet engines entered for repairs.

All drawback claims require that the article be exported within five years of importation. Where substitution drawback is claimed, the exported product or manufacture must have been made (from imported or like domestic merchandise) within three years from the receipt of the imported article.

Drawback provides for the refund of 99% of all customs duties paid on the imported merchandise.

This section would allow drawback of customs duties paid on cane sugar imported from November 1, 1977, to March 31, 1985, provided that the export of refined sugar or of sugar-containing products manufactured from cane sugar occurs before October 1, 1991. The provision would allow the recovery, via drawback, of both previously paid import duties and section 22 fees (imposed under section 22 of the Agricultural Adjustment Act, as amended) for which the eligibility period for obtaining drawback has expired under current law.

The specified period in the legislative provision coincides with a period of time during which the column 1 rate of duty was at its highest permissible level and during which section 22 fees were in place. Since the provision would set an export time limit of October 1, 1991, it is possible that claims for drawback based on 1977 to 1985 imports could go on through September 30, 1994. It should further be noted that the period in which exports could be made (and drawback claimed) extends through the current expiration date of the domestic price-support program for sugar.

The purpose of this provision is to enable U.S. sugar refiners to continue to export refined sugar to the world market with benefit of previously expired drawback.

The provision is narrowly drawn to apply only to imports of raw cane sugar, and exports of refined cane sugar or products manufactured or produced from refined cane sugar, to ensure its application only to products relating to cane sugar, and not beet sugar. The special benefits of drawback are intended only for imports of raw cane sugar and exports of products made from raw cane sugar.

The section also requires the Secretary of Agriculture, in conjunction with the Commissioner of Customs, to study and report back to the Committee on Ways and Means of the House and the Committee on Finance of the Senate by June 30, 1988, on circumvention of the U.S. sugar quota through the importation of sugar blends. The report must address the severity of the problem, or lack thereof, and suggest concrete steps, as necessary, to prevent such circumvention. The purpose of this subsection is to provide the Committee with detailed information on the nature and extent of any circumvention of the sugar import quota resulting from the importation of refined sugar in the form of blended products.

ETHYL ALCOHOL AND MIXTURES FOR FUEL USE

(Section 898)

Under section 423 of the Tax Reform Act of 1986, ethyl alcohol (or an ethyl alcohol mixture) may be admitted into the United States duty-free if it is an indigenous product of a U.S. insular possession or a beneficiary country under the CBERA.

Ethyl alcohol (or an ethyl alcohol mixture) may be treated as being an indigenous product of an insular possession or beneficiary country only if the ethyl alcohol (or a mixture) has been both dehydrated and produced by a process of full-scale fermentation within that insular possession or beneficiary country. Alternatively, ethyl alcohol (or a mixture) must have been dehydrated within that insular possession or beneficiary country from hydrous ethyl alcohol that includes hydrous ethyl alcohol which is wholly the product or manufacture of any insular possession or beneficiary country and which has a value not less than (1) 30 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1987, (2) 60 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1988, and (3) 75 percent of the value of the ethyl alcohol or mxiture, if entered after December 31, 1988.

The Tax Reform Act provided transitional exemptions during 1987 and 1988 for up to 20 million gallons per year each produced by certain azeotropic distillation facilities, including one for which the equipment was, on January 1, 1986, ready for shipment to and installation in a CBI country. Section 898 amends this transitional provision to provide that it will apply if the equipment is installed either in a CBI beneficiary country or a U.S. insular possession.

Title IX. Miscellaneous Trade Provisions

SUBTITLE A. TELECOMMUNICATIONS TRADE

(Sections 901 through 913)

The premise of this subtitle is that telecommunications deregulation and the court-ordered divestiture (break-up) of AT&T represent a unilateral elimination of a major non-tariff barrier to imports of telcommunications equipment. As the world's largest telecommunications market, the United States is well placed to take the lead in achieving more open world trade in telecommunications. Systematic use of access to the United States market as negotiating leverage and strict enforcement of existing trade agreements are to be used as a means of opening the world market and improving access to foreign markets for American telecommunications exports. Such access is believed essential if United States producers of telecommunications equipment and services are going to compete successfully with foreign producers, many of whom receive protection and support from their governments.

The objectives of this subtitle include negotiation of agreements to obtain opportunities in foreign markets that are substantially equivalent to opportunities available in the United States market for telecommunications products and services. For this purpose, the President is given a three year authority to negotiate bilateral or multilateral agreements to open trade in telecommunications, and may, for this purpose, eliminate or modify United States tariff and non-tariff barriers.

The breakup of the Bell System is the most recent in a series of judicial and regulatory actions which have progressively opened up the United States telecommunications market to domestic and foreign suppliers. A series of FCC actions in the 1960s and 1970s allowed non-Bell equipment to be connected to the public switched telephone network (PSTN). As a result, imports of products, such as telephones, modems, telephone answering machines, and PBX's have increased substantially. At the same time, increased United States exports of telecommunications equipment have fallen far short of the growth in United States imports and continue to represent a very low share of total world consumption. In significant part, this reflects the fact that most foreign markets which have their own indigenous equipment suppliers are closed to United States telecommunications products. United States exports have increased primarily to developing countries and the Middle East. As a result of these trends, the United States balance of trade in telecommunications equipment turned negative for the first time in 1983.

According to U.S. Department of Commerce statistics, imports of telecommunications products grew by 320 percent between 1981 and 1986. By contrast U.S. exports grew by only 41 percent during the same period. These trends were evident before the divestiture of AT&T and it is believed that the divestiture has only accelerated these trends—particularly with respect to switching and transmission equipment. Reports indicating that former Bell companies have turned to foreign sources on a widespread scale suggest that not only may the Bell operating companies' market no longer be dominated by Western Electric, but that enhanced sales opportunities for existing and potential domestic equipment producers may never be realized due to foreign competition.

The United States represents the world's largest market for telecommunications equipment. The other major markets which have a domestic telecommunications industry of their own include various member states of the European Community, Japan, and Canada. Virtually all foreign telephone administrations have restrictive purchasing policies in place which favor domestic suppliers. Most of the trade which presently exists involves the sale of equipment to the private sector. Of the $1.3 billion dollars in United States telecommunications equipment exported in 1983, less than $.5 billion went to the eight developed countries representing a $21.5 billion market.

The current world market in telecommunications products is expected to reach $90 billion by 1990. Many foreign firms challenging United States manufacturers for this market enjoy protected home markets through government-run postal telephone and telegraph agencies (PTT) or similar monopolies that control the purchase of equipment through certification procedures, licenses, standards and other requirements that often constitute insurmountable barriers.

The following is a brief discussion of key foreign telecommunications markets.

Japan.—The Japanese telecommunications market is the second largest single telecommunictions market in the world, after that of the United States. Japan accounts for 43 percent of United States telecommunications imports. The principal mechanism to encourage Japan's technological development in telecommunications has been the national service monopoly, Nippon Telegraph and Telephone Corporation (NTT). Japanese equipment suppliers—known in the industry as the NTT family of corporations—engage in controlled competition to provide NTT its equipment needs. Helped by their insulation from foreign competition, the Japanese telecommunications industry has become a world class competitor. While still influential in setting standards and specifications, as well as being a source of technology, NTT accounted in 1985 for less than half of telecommunications purchases. In addition, a 1980 agreement between the United States and Japan to open NTT's procurement process has yielded some results, but NTT's purchases of foreign equipment continue to account for a miniscule portion of its total procurement. Moreover, NTT has been slow to sign contracts involving equipment that would become part of a functional Japanese telecommunications network. Finally, NTT represents a progressively smaller segment of the overall telecommunications market in Japan. As such, NTT's relative importance as the "window" to the overall Japanese market is significant but diminishing.

It is still too early to determine what effect the ongoing process of NTT privatization will have on encouraging an open market, for at present NTT remains under government ownership. As can be seen in the recent example involving telecommunications satellites and standards for mobile telephone equipment, normal market forces in Japan still seem to be subordinated to other national objectives.

Two competing consortia have developed to rival Kokusai Denshin Denwa (KDD), Japan's existing international telecommunications monopoly. International Digital Communications (IDC) is led by the Japanese trading firm, C. Itoh, and includes Toyota, Cable and Wireless (Britain), and Pacific Telesis (US). Its all-Japanese rival, International Telecommunications Japan (ITJ), is sponsored by the Ministry of Posts and Telecommunications (MPT) and includes Matsushita Electric, as well as a number of major trading companies—Mitsubishi, Matsui, and Sumitomo. MPT has decided that the market cannot support two competitors to KDD and is

73-814 0 87 - 8

trying to force a merger of the two consortia in a way that would severely limit foreign equity participation, in violation of Market-Oriented, Sector Specific (MOSS) talk commitments with the United States.

Moreover, as a precondition to setting up the joint venture, IDC wants to lay its own trans-Pacific fiber optic cable as opposed to leasing from KDD. But ITJ is opposed to laying its own cable and has contended that this should not be a prerequisite for proceeding with the merger. The Japanese Government has delayed on the cable issue and has offered to conduct a "feasibility study" on the proposed new undersea cable.

There is currently a $400 million portable car telephone market in Japan, with estimated growth potential of 40 to 50 percent annually for the next five years. Motorola supplies cellular telephones to NTT and to an NTT competitor, Daini Denden, Inc. (DDI). Motorola clearly is a leader in this field. Yet, in February 1987, Nippon Teleway was awarded exclusive rights to compete with NTT in Tokyo and Nagoya, which together account for 70 percent of the Japanese market. Motorola and DDI were granted all major cities to the west, which, taken together, account for only 30 percent of the market. The reason given by MPT for this segmentation of the market was to limit outside suppliers to one per city in order to control market growth and to protect NTT from "excessive" competition.

Europe.—Collectively, Western Europe represents the second largest potential telecommunications market. However, telecommunications policies for the 10 member collective must be viewed as distinct from individual national policies. Although the European Commission has attempted to stimulate a community-wide market for telecommunications, most European telecommunications markets remain dominated by government postal and telecommunications organizations which have monopoly control of telecommunications equipment and services. Largely due to the entrenched nationalistic attitude toward competition, United States companies face limited access to many countries. Moreover, there is widespread concern among United States producers that European Commission efforts to harmonized member state standards could well lead to the exclusion of foreign producers from the European Economic Community market.

In France, CIT-Alcatel/Thompson provide all of the central exchange equipment and 70 percent of transmission equipment for the French PTT. Overall, French companies supply 70 percent of the French interconnect market, in addition to their share of the French PTT which is nearly 100 percent. Little doubt exists that market access to the French telecommunications market is nearly nonexistent and presents a impenetrable barrier to United States supplies which is greater than any country including Japan.

As a step toward opening its telecommunications market, France decided recently to privatize Cie. Generale de Constructions Telephoniques (CGCT), its state-owned telecommunications equipment maker. CGCT controls 16 percent of the French Government market for computerized telephone exchanges. AT&T, together with Philips, had been trying to buy the ailing French company for more than two years, as a means to expand European sales of

AT&T technology. The AT&T-Philips joint venture bid aggressively for CGCT, but encountered serious competition from Siemens, which has opposed AT&T's efforts to gain a foothold in Europe. The German Government openly lobbied on behalf of Siemens, despite U.S. requests that the decision be based solely on "commercial and technical merits."

France ultimately awarded control of the company to Sweden's Ericsson, which reportedly was given the opportunity to improve its offer after details of the other tenders had been made public. Political considerations appear to have outweighed AT&T's acknowledged technological superiority.

In West Germany, the Bundespost maintains a highly restrictive system in terms of procurement and provision of services in which Siemens dominates as the single largest beneficiary. In fact, the Bundespost has been working with France to the detriment of other competitors. This is evidenced by the Bundespost efforts with the French to establish a Franco-German set of standards for the cellular radio system that would effectively limit those two markets to French and West German national firms.

The United Kingdom continues to move toward liberalization of its telecommunications market. In July 1979, the traditional United Kingdom monopoly structure changed, permitting a separate corporation called British Telecom (BT) to concentrate on telecommunications and leaving the British Post Office to handle mail and the banking services. By passing the British Telecom Act of 1981, the UK government also opened the way for further competition in telecommunications services. For example, under this law, private firms may be licensed to provide services using BT's network and private firms will be permitted to sell telephone equipment directly to customers.

Canada.—Canada is one of the few countries that allows even a limited amount of competition in its domestic market. Unlike other countries where state monopolies dominate domestic markets, the Canadian telecommunications market is made up of systems which differ by province consisting of private, governmental and joint private-governmental operations. Like the United States in its predivestiture period, Canadian telephone services are vertically integrated with Canadian equipment manufacturers companies linked to telephone operating companies. While the Canadian market is more open than those of most other developed countries, discriminatory procurement by vertically integrated companies, along with 17½ percent tariffs on most telephone equipment imports, result in effective trade barriers to United States firms.

Free trade area negotiations are now underway between the United States and Canada. It is the Committee's hope that reciprocal trade in telecommunications products and services can be achieved through free trade area talks, thereby satisfying the requirement of this legislation. However, failure to achieve satisfactory results through the free trade area makes the use of this legislation's leverage with respect to Canada no less important.

Newly Industrialized Countries (NICs).—A major portion of the growth in the United States telecommunications trade deficit is attributable to rapidly growing imports from several newly industrialized countries, especially Taiwan, Korea and Hong Kong. Other than Brazil and its restrictive informatics policy, these countries do not yet appear to pose major market access problems for United States industry. Most NIC countries have limited manufacturing capabilities beyond low-cost standardized equipment—for example, cheap hand-held telephone sets which make up most of the United States telecommunications trade deficit with Hong Kong, Korea and Taiwan. As a result, at present they purchase most of their systems from foreign suppliers. Because most of these purchases take on a major projects emphasis, one of the largest issues for success in competing with Japanese and European competitors in these NIC markets is export financing-either subsidized or at below-market rates. However, to the extent that these and other countries' markets for and production of telecommunications equipment expand, United States producers need the assurance that they will not emulate the restrictive policies that characterize most developed countries.

The Telecommunications Trade Act grants the President three-year authority to open trade in telecommunications with countries which have major markets or potential markets for telecommunications. Any agreements entered into would be approved by Congress and may be treated as a trade agreement under the fast-track legislative procedures set out in sections 102 and 151 of the Trade Act of 1974.

Imbalances in competitive opportunities in telecommunications trade which still exist at the end of eighteen months following the bill's enactment are to be corrected by restricting imports of products and services of countries which have failed to enter into trade agreements to correct those imbalances. Remedies available to the President include duty increases, restrictions on registration or approval of equipment, restrictive government procurement practices and other measures. The President is given authority to compensate countries whose exports are affected.

Within 135 days of enactment, the Act requires that the United States Trade Representative retaliate against countries which have failed to comply with existing commitments to open their telecommunications markets. The purpose of retaliation is to restore the balance of competitive opportunities by raising duties and restricting registration or approval of telecommunications products imported from those countries. The President is given authority to compensate countries whose exports are unintentionally affected or in the event that such retaliation is found subsequently to be inconsistent with the international obligations of the United States.

Negotiations and retaliation are to be based on a four-month investigation by the United States Trade Representative of foreign barriers to United States telecommunications exports, with a principal objective of achieving access opportunities in foreign markets for sales of telecommunications equipment and services by United States firms substantially equivalent to the opportunities available to foreign firms in the United States market.

A. FINDING AND PURPOSES

The world market for telecommunications will be a source of rapid growth in the coming decade. The growing imbalance of trade opportunities resulting from deregulation and divestiture in the United States market and the continuation of unfair and discriminatory practices in foreign telecommunications markets threatens the loss of jobs in the United States telecommunications industry and its ability to compete. Accordingly, the Act finds that the United States should avoid granting continued open access for foreign telecommunications producers in its market unless the imbalance is corrected through the achievement of substantially equivalent competitive opportunities (SECO) abroad for United States telecommunications products and services. The purposes of the Act include the fostering of economic and technological growth of and employment in the United States' telecommunications industry and the achievement of a more open world trading system in telecommunications through the negotiation and achievement of substantial equivalent opportunities for United States telecommunications exporters.

The principle of substantially equivalent competitive opportunities has been included as a fundamental negotiating objective for United States trade policy in telecommunications. The concept behind this principle is the achievement of an increased level of access that allows the United States industry to compete effectively in the world market. This does not mean the achievement of a strict mirror image of all the conditions of competition of the United States market in the markets of particular foreign countries. Rather, it assumes that specific negotiating objectives for each country would be established to reflect the existing market structure in that country—with a view to achieving overall competitive opportunities comparable to those in the United States market. For example, while the legislation does not assume foreign countries will eliminate vertical integration in their telecommunications markets, it does anticipate that comparable openess can be achieved through more open procurement processes, elimination of restrictive standards, and other specific negotiating objectives.

References in the legislation to the imbalance in trade opportunities accruing from the liberalization and restructuring of the United States telecommunications market relfect the Committee's deep concern about the unanticipated trade effects of telecommunications deregulation and divestiture in this country. While the purpose of this legislation is not to "reregulate" the United States telecommunications market, it is intended to harness the trade effects of deregulation and divestiture in this sector—namely, the unilateral opening of major segments of the market to imports—as leverage to achieve a more open world trading system in telecommunications.

The Committee believes that the trade situation characterizing the United States telecommunications market is almost unique and therefore requires the kind of special and timely treatment provided for in this legislation. While the Committee is not asserting that the GATT necessarily requires compensation by trading partners for uncompensated reductions in barriers by any given country, correction of the imbalance in market opportunities (relative to other countries) created by such action is a legitimate trade policy objective.

In the case of telecommunications trade, improved access to the United States market accruing from deregulation and divestiture must be included in any estimate of the openness of the United States market and in any assessment of whether the United States negotiating objective of "SECO" has been achieved. Similarly, any United States action to achieve such objectives—whether in the form of United States concessions or in terms of unilateral action to restore the balance of opportunities—must take into account previous unilateral actions that have had the effect of opening the United States market to our trading partners. Finally, as regards potential compensation for unilateral action to offset foreign barriers to United States telecommunications exports—particularly in the context of GATT Article XXVIII negotiations—United States negotiators should ensure that appropriate credit is given for unilateral reductions in United States barriers that have never been "paid" for by our trading partners—in particular, those related to divestiture that have occurred since the last major multilateral trading rounds.

Under the Telecommunications Trade Act, international satellites (including transponders) and related services, and international cable facilities and related services, are encompassed within the term "telecommunications products and services." With respect to these and other telecommunications products and services, pursuant to section 304 of this Act, nothing in the Act is intended to require action that is inconsistent with U.S. obligations under any international telecommunications agreement.

B. INVESTIGATION BY THE UNITED STATES TRADE REPRESENTATIVE OF FOREIGN BARRIERS

Section 904 requires that the United States Trade Representative, in consultation with other members of the Trade Policy Committee, complete an investigation within four months of the date of enactment to identify and analyze (1) all acts, policies, and practices, in foreign telecommunications markets that deny to the telecommunications products and services of United States firms competitive opportunities that are substantially equivalent to those available to such products and services in the United States, and (2) which of such acts, policies or practices denies or impairs benefits to which the United States is entitled under existing agreements. The purpose of distinguishing between foreign telecommunications barriers in general and those which specifically deny the United States benefits to which it is entitled is to identify those barriers which must be removed through negotiation and compensation and those against which the United States has a right to retaliate.

In conducting his investigation, the United States Trade Representative is directed, under Section 904(b) to take account of the actual or potential economic benefits accruing to foreign firms from improved access to the United States market accruing for deregulation and divestiture in the telecommunications market and the actual patterns of trade, including United States telecommunications exports to foreign countries in relation to the international competitiveness and export potential of such products and services.

In making this analysis with respect to countries that have made commitments or concessions to the United States involving trade in telecommunications, foreign barriers are presumed to exist if the actual patterns of trade, do not reflect the patterns which could be reasonably anticipated to flow from such concessions or commitments. The Committee intends to ensure that the removal of formal barriers does not permit the classification of that market as open unless the patterns of trade which would reasonably be expected to emerge from the removal of such formal barriers does, in fact, materialize. "Invisible" or "informal" barriers have become a major obstacle in gaining access to the Japanese and other markets, and this provision is intended to focus the analysis on the results, rather than nominal openness, associated with access to foreign markets.

The requirement that actual patterns of trade be taken into account in determining market openness is designed to go beyond traditional means of analysis that focus primarily on nominal or formal barriers to access. By bringing empirical data and evidence to bear in the determination, the Committee expects the United States Trade Representative to find evidence of trade distorting practices that are of a more informal or less visible nature. Evidence of such practices might take the form of comparisons between the world market share of a given United States export and a substantially smaller share in the country in question or between sales of a product in one country that are disproportionately smaller than its sales in a country with a similar market. The Committee expects actual sales to be factored into any such determination and would anticipate that agreements reached pursuant to this Act would include monitoring provisions to see that measurable results are indeed achieved.

Where a country is party to a trade agreement that provides access to only a portion of its telecommunications market, the legislation would provide for treatment of that country under both sections 904 (a)(1) and (a)(2) and related negotiation and retaliation tracks. If that country is found to maintain policies that deny "SECO" but do not violate existing agreements, it would be treated solely under the negotiation track. If the country were found in violation of its agreement—therefore subject to retaliation—acts, policies and practices identified in the investigation which deny "SECO" would still be the subject of a negotiated agreement.

The bill contains no explicit references to sales by subsidiaries as a measure of the openness of either the United States or foreign telecommunications markets. This was intended to avoid any suggestion that the Act's retaliatory authority is to be used against United States-based production by subsidiaries of foreign firms. Nonetheless, by this action the Committee did not intend to ignore access that is achieved through investments in business entitites established in foreign countries in evaluating the openness telecommunications markets—particularly to the extent that such entities enhance United States exports. For example, the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market telecommunications products and services is one of the explicit objectives. (See section 905(a)(2)(B)(vii)). Indeed, the Committee is aware that in most circumstances, telecommunications products and services cannot be marketed without establishing a local business entity. Furthermore, investments of this type often contribute substantially to increased United States exports by creating a market for United States goods and services. The fact that the United States is open to foreign investment—as demonstrated by the success of many foreign telecommunications companies with United States subsidiaries—should provide one of the standards against which to evaluate the openness of foreign markets to the telecommunications products and services of United States firms.

However, where there are barriers to the establishment or operation of foreign entities of United States companies, or there is a requirement that a United States company establish an entity (subsidiary, joint venture or other business arrangement) in order to gain access or there are investment performance requirements imposed on such entities, these barriers and requirements should be included in the analysis. It follows that sales gained through compliance with legal (as opposed to commercial) requirements of establishment of an entity in the foreign country should not be considered evidence of market openness in that country.

Section 904(c) permits the United States Trade Representative to exclude any country from the requisite investigation after consulting with the Finance and Ways and Means Committees. It is the Committee's intent that countries excluded from investigation under this provision may be included in a subsequent annual review pursuant to section 906(b) in the event that that country's potential telecommunications market is determined to be substantial.

C. PRESIDENTIAL ACTION

Section 905 directs the President, based on the four-month investigation, to enter into negotiations with foreign countries whose barriers to the importation of telecommunications products and services deny United States firms competitive opportunities which are substantially equivalent to those available to foreign firms in the United States. General objectives for these negotiations include the achievements of multilateral or bilateral agreements that provide for substantially equivalent opportunities, correction of the imbalance in opportunities accruing from deregulation and divestiture in the United States telecommunications market and facilitation of United States exports in this sector to a level commensurate with the competitiveness of the United States industry. To achieve these general objectives, specific objectives are set out to guide the President in his negotiations. They include the negotiation of national treatment, most-favored-nation treatment, nondiscriminatory government procurement policies, the inclusion of telecommunications within the coverage of the government procurement code, equipment standards and procedures for certification which do not exceed the minimum standards and procedures necessary to prevent harm to the telecommunications network, and a variety of other objectives affecting trade in telecommunications products and services.

It is the intent of this legislation that the general SECO standard be translated into a set of specific objectives for each country which are to guide United States negotiators in their efforts to open foreign markets. The achievement through negotiations of the specific objectives identified through this process—both overall and with respect to individual countries—should, therefore, result in achievement of the general objectives in section 905(a)(2)(A), including the assessment of whether substantially equivalent competitive opportunities have been attained through trade agreements. In making this assessment, the President is directed to take into account the factors in section 904(b)(1). Where negotiations have failed to achieve the general and related specific objectives, the President is then directed to determine to what extent unilateral actions are necessary to achieve substantially equivalence in competitive opportunities.

The Committee expects the President to factor into the development of specific negotiating objectives the competitive potential of U.S. telecommunications firms. It would be undesirable to offer a foreign country compensation for the removal of telecommunications barriers when the removal of those barriers redound to the benefit of telecommunications firms of third countries.

In the event that the President is unable to obtain an agreement to meet the negotiating objectives with respect to opening a foreign market to telecommunications products and services within eighteen months of the date of enactment, he is directed by section 905(b) to take action to remove the imbalance of competitive opportunities. These actions are to be initially directed at trade in telecommunications products and services, and only in the absence of such trade is the action to be directed at other products and services. The purpose of directing action against foreign telecommunications products and services (where possible) is to exert pressure on the foreign producers which benefit most from access to the United States telecommunications market and from protection against United States exports in their home markets. Actions taken by the President pursuant to section 905(b) are subject to Congressional approval pursuant to the fast-track legislative procedures of sections 102 and 151 of the Trade Act of 1974.

Requiring legislative approval, on a fast-track basis, of Presidential actions under section 905(b) as well as the agreements entered into under section 908 and compensation offered under section 909 is based on the Committee's assumption that all of these elements involving several different countries would be combined in one Presidential submission to Congress at the conclusion of the eighteen-month period following enactment. This mechanism is designed to ensure that a balanced package of market liberalizing and offsetting actions is achieved in determining the extent to which substantially equivalent competitive opportunities have been obtained and the nature and extent of the United States response to the extent that they have not been.

The Committee chose 18 months as the deadline for action during the negotiating period because of the urgency of the problems addressed by this legislation. In particular, the Committee notes that the need to address the trade implications of telecommunications deregulation and divestiture has been brought to the attention of the Administration on numerous occasions, beginning with hearings in June 1984 and Committee approval of this legislation in the last Congress (S. 942) in September 1985.

Section 905(b)(3) authorizes the President to raise tariffs or otherwise terminate trade agreements, use authority under Section 301(b)(2) or (c) of the Trade Act of 1974 relating to restrictions on FCC registration or approval, prohibit the Federal Government from purchasing telecommunications products of a specified country, increase domestic preferences or suspend waiver of domestic preferences related to Federal Government telecommunications purchases, deny Federal funds or credits for purchases of telecommunications products, suspend GSP benefits and take any other action pursuant to section 301 of the Trade Act of 1974 against products and services other than telecommunications products and services.

With respect to the authority to terminate or suspend trade agreements for the purpose of increasing tariffs, the President is authorized under section (4)(A) and (B) to "unbind" or suspend existing GATT obligations at the Column 1 TSUS rate prior to the 18 month deadline without actually raising the tariff until later. In products where imports may be increasing rapidly due to deregulation, this would enable the President to moderate the amount of compensation due to principal suppliers of the product should the tariff later be raised.

The President is authorized to choose from among a broad range of offsetting measures under this section. The Committee believes the President has sufficient flexibility in his choice of options to enable him to tailor his action to the telecommunications trade situation characterizing each country and to maximize U.S. negotiating leverage. Careful selection of potential countermeasures, combined with the credible threat of their imposition, offers the greatest prospect for a negotiated, market-liberalizing solution.

Should the imposition of offsetting measures be necessary, the President is expected to use the flexibility provided to impose those restrictions that are likely to have the most profound effect on the specific country involved, to moderate or preclude any cost of compensation, and to avoid or minimize the negative impact on domestic purchasers of equipment and services. In this last regard, the Committee expects the Administration to pay serious attention to advice from such purchasers, taking into account such factors as the ready availability of alternate sources of supply, the price and technological competitiveness of such suppliers, and the technological compatibility of their products. The Committee assumes the President will exercise his flexibility under this Act so as to ensure that the benefits to U.S. telecommunications interests outweigh any harm to such interests. The availability of a range of options, however, does not eliminate the requirement that his actions be of sufficient magnitude to fully achieve the objectives in 102(a)(2)(A).

The Committee recognizes that the President will be faced with difficult choices in offering compensation to foreign countries pursuant to the mandate of this legislation. American industries cannot be expected to welcome increased foreign competition in the interest of equalizing market access in telecommunications. But the Committee believes that the importance and potential of the

U.S. telecommunications industry justifies the trade-offs made necessary by this legislation.

In order to ensure the sanctity of contracts, actions taken by the President under the authority of section 905(b) will not affect binding obligations under any written contract entered into before April 17, 1985 to which a United States national is a party.

D. ACTIONS BY THE UNITED STATES TRADE REPRESENTATIVE

Section 906 relates to action required when a country is not in compliance with a trade agreement related to telecommunications which is in existence upon enactment of this Act. It directs the United States Trade Representative to take action, within 15 days of the conclusion of its four-month investigation, to retaliate against acts, policies, or practices identified pursuant to section 904(a)(2) in order to fully offset them and to restore the balance of concessions with that country. Similar retaliatory actions are required of the United States Trade Representative under section 906(b)(2) at the end of the review completed on each anniversary of the section 904 investigation if that review reveals that a foreign country is not complying with the agreement negotiated by the President pursuant to the authority of the Act or has adopted an act, policy or practice described in section 904(a)(2). The specific negotiating objective cited in section 905(a)(2)(B)(viii)—related to dispute settlement and the monitoring of trade agreements—could be used to establish the procedures and terms for such action.

Actions authorized to be taken by the United States Trade Representative under section 906(c) include the termination, withdrawal or suspension of a trade agreement, or portion thereof, the use of authority under Section 301 (b)(2) or (c) of the Trade Act relating to restrictions on FCC registration and approval authority and the use of section 301 of the 1974 Act authority against products or services other than telecommunications equipment. However, actions may be taken against products or services which are not related to telecommunications only if all feasible action has been taken against telecommunications products or services from that country.

Taken as a whole, section 906 represents a mechanism for systematic enforcement of United States rights under trade agreements related to telecommunications. The Committee on Finance believes that the aggressive enforcement of such trade agreements is absolutely necessary if the negotiation of further trade agreements is to have any real benefit for the United States. In this regard, several Members of the Committee expressed concern about the marginal benefits to date to United States firms of telecommunications trade agreements negotiated with Japan under the MOSS framework with MPT, as well as the 1980 agreement related to NTT procurement. Since the purpose of negotiating market-liberalizing trade agreements is to enhance trade, the reviews required by section 906(b) are to be conducted taking into account the results-oriented measures in section 904(b).

Since the purpose of this legislation is to use the United States market as leverage to open foreign markets—not to close or "reregulate" the United States market—the Committee expects that any action by the President under section 905(b) or by the United States Trade Representative under section 906 (a) or (b) will be designed to maximize the economic impact on foreign suppliers while minimizing the economic impact on domestic United States interests. In this regard, nothing in these subsections is meant to imply that action should be directed at United States subsidiaries of foreign firms. This will require close consultation with domestic United States interests on both targets and instruments for action by the President or the United States Trade Representative.

The annual review and determination of the United States Trade Representative required by 906(b) is to be submitted to the relevant Congressional committees. These submissions would be expected to include assessments of action taken or anticipated (both by the President under 905(b) and by the United States Trade Representative under section 906 (a) and (b) as well as a review of countries initially excluded from investigation pursuant to section 904(c).

Section 906(d) grandfathers binding obligations under written contracts entered into before April 17, 1985 to which any national of the United States has been a party.

E. CONSULTATIONS

Section 907 requires the President and the United States Trade Representative to consult with the Secretary of Commerce, the Federal Communications Commission and the Trade Policy Committee as well as the private sector advisory committees established under section 135 of the Trade Act of 1974 and other interested parties in the course of investigations, in the development of negotiating objectives, and in considering proposed action. Furthermore, the President is required to consult on a regular basis with appropriate Congressional committees on all aspects of the negotiations.

F. NEGOTIATING AUTHORITY

Section 908 authorizes the President to enter into trade agreements to achieve the bill's objectives during a three-year period following the date of enactment. Agreements entered into are to be treated, pursuant to section 908(b) as trade agreements subject to fast-track procedures of sections 102 and 151 of the Trade Act of 1974. The President is given the option of making benefits of trade agreements negotiated under this authority available to all countries, or just the ones which are parties to the agreement.

The Committee notes that while the President is required to act to achieve his negotiating objectives within 18 months after enactment, it would still be possible to negotiate telecommunications trade agreements after that deadline. The action-forcing mandate of 18 months is designed to enhance the leverage of United States negotiators and to improve the prospects for rapid negotiation of market opening agreements.

G. COMPENSATION AUTHORITY

Pursuant to section 909 the President is given authority to compensate a foreign country with respect to actions which the President has taken to restore the balance of competitive opportunities under section 905(b). Similar compensation authority given to the United States Trade Representative in the event retaliation taken pursuant to section 906(a) is subsequently found to be inconsistent with United States international obligations or in cases where action taken against one country (e.g., a tariff increase against a product for which the country is the principal supplier) also affects a country against which the United States Trade Representative is not acting (e.g., a residual supplier of the same product). Agreements which reflect the compensation authorized by section 909(a) are to be submitted to Congress pursuant to the fast-track procedures of sections 102 and 151 of the Trade Act of 1974.

The Committee anticipates that any compensation owed in response to Presidential action under section 905—particularly if he conducts his negotiations under Article XXVIII of the GATT—should be minimal to the extent that appropriate credit is obtained for unilateral reductions in United States telecommunications trade barriers through deregulation and divestiture.

H. MISCELLANEOUS PROVISIONS

Among the miscellaneous provisions of the bill is section 910 requiring the collection and dissemination of information related to compliance of imported products with FCC regulations. Section 911 requires the Secretary of Commerce to report to Congress within six months after the date of enactment, and every two years thereafter, on the impact of United States domestic policies and practices on the growth and international competitiveness of the United States telecommunications industry.

Finally, section 912 provides that nothing in the bill is to be construed to require action by the President or the Congress that is inconsistent with the international obligations of the United States. While the bill does not require Presidential or Congressional action to be consistent with U.S. international obligation, that is the intent of the sponsor of the bill.

SUBTITLE B. CUSTOMS PROVISIONS

DUTY-FREE SALES ENTERPRISES

(Section 921)

This section would establish, for the first time, a comprehensive statutory framework for the regulation and operation of duty-free sales enterprises (also referred to as "duty-free stores"). It would allow the Customs Service, which regulates duty-free stores, to promulgate regulations to govern duty-free stores and would also provide explicit guidance to operators of such stores.

Duty-free stores are business which cater to the international pleasure and business traveller and which thus play an important role in the U.S. travel economy. More than 120 stores nationwide sell duty- and tax-free merchandise to departing international passengers at virtually every major U.S. international airport and border crossing. The legislation defines the terms "airport" and "border" duty free store, among other things.

These stores benefit the United States in a number of ways. First, operators of these stores pay substantial concession fees to the state and local governmental authorities that operate airports, seaports, and other similar points of exist from the United States. In the case of airport stores, these concession fees account for a significant part of total airport operating revenues at locations such as Honolulu, San Francisco, New York, Anchorage and Los Angeles. Second, they induce foreign visitors to increase their expenditures for goods in the United States. Finally, it has been shown that duty-free stores actually attract tourists to the U.S., thereby benefiting other U.S. industries, including airlines, hotels, and restaurants. This bill is designed to foster these benefits, while providing, for the first time, for the effective regulation of duty-free operations by the Customs Service.

The bill would amend section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) pursuant to which the Customs Service currently regulates "bonded warehouses." Duty-free sales enterprises are a special category of "bonded warehouses" and it is under the bonded warehouse provisions of section 555 (and related sections) of the Tariff Act that they have been regulated.

Section 921(a) sets forth Congressional findings which acknowledge the significant economic benefit derived from duty-free stores and the need to provide adequate statutory and regulatory recognition of, and consistent guidelines for, duty-free stores.

Section 921(b) amends subsection 555(b) of the Tariff Act of 1930 to provide statutory guidelines for the regulation of duty-free stores by the Customs Service.

Subsection (b)(1) of amended section 555 of the Tariff Act of 1930 (all subsequent subsection references are to section 555, as amended by this legislation) authorizes duty-free stores to sell and deliver for export from the Customs Territory of the United States duty-free merchandise in accordance with the legislation and regulations which may be prescribed by the Secretary of the Treasury. In the past, the Customs Service attempted to promulgate regulations to govern duty-free sales enterprises without the benefit of guidance from the Congress. The Congress intervened to prohibit those regulations from being issued until the Congress had enacted legislation which would set forth the scope and bases for the regulation of duty-free sales enterprises. After enactment of this legislation, the Customs Service would be allowed to issue implementing regulations in accordance with the rulemaking procedures of the Administrative Procedure Act.

Subsection (b)(2) sets forth certain limits on the location of duty-free stores. Under this paragraph, duty-free stores could be located anywhere within the same port of entry (the limits of which are set forth in Customs Service regulations and decisions) from which a purchaser of duty-free merchandise departs the United States, or anywhere within twenty-five statute miles of the exit point from which the purchaser will depart the customs territory (i.e., specific airport, seaport, or border crossing). In some instances, a duty-free store may be located within twenty-five miles of several exit points, in which case delivery of merchandise to departing passengers, and subsequent exportation from the customs territory could occur through any of the exit points which are within twenty-five miles of the location of the duty-free store. Aside from these restrictions, the distance between a duty-free store and an exit point is left to the discretion of the person who will operate the store and is not subject to regulation by the Customs Service. Under this provision, operators of duty-free stores will have sufficient flexibility with respect to the location of their stores to take advantage of business opportunities, while at the same time ensuring that the Customs Service has adequate control over the stores to ensure that they operate in accordance with the law and implementing regulations and, particularly, that the merchandise that is sold by them is exported from the United States or otherwise accounted for. Moreover, regardless of where a duty-free sales enterprise is located, delivery of merchandise to departing passengers would be allowed only in accordance with one of the specific methods specified.

Subsection (b)(3) sets forth a number of specific requirements for duty-free stores:

Subsection (3)(A) requires duty-free stores to establish procedures to provide reasonable assurance that duty-free merchandise sold by the store will be exported. This provision imposes a high standard on operators of duty-free stores to adopt appropriate procedures designed to satisfy the important requirement that duty-free merchandise be exported. The precise procedures which are needed will vary, depending on a number of factors, including the location of the store and physical and geographical surroundings. A duty-free operator is not required absolutely to guarantee exportation, but must implement reasonable measures within the operator's control to assure that exportation takes place. Because operators of duty-free stores are continuously subject to the requirements of a customs bond, the Customs Services always has adequate remedies in the event that exportation does not occur. Under longstanding practice and under the terms of the bond, when exportation of an item cannot be established, an operator must pay the duty or tax on the item. Moreover, in appropriate cases, liquidated damages may be imposed.

Subsection (3)(B) requires that duty-free stores establish and enforce limits on the quantity of goods sold to any one individual to quantities appropriate for personal use. As defined in subsection (8)(G), personal use quantities means other than resale quantities, but includes quantities appropriate for household or family consumption as well as for gifts to others. Personal use quantities are not restricted to the quantities of merchandise that a departing passenger may bring into his or her destination country free of duty. Under this provision, the Customs Service would not be authorized to fix personal use quantities at specific levels, but only to issue guidelines to assist operators in establishing and enforcing the statutory requirement.

Subsection (3)(C) requires duty-free stores to post signs in prominent places within their stores which state that the merchandise purchased has not been subject to U.S. duty or tax, that such merchandise must be declared and is subject to duty and tax if brought back to the United States, and that such merchandise is subject to the customs laws and regulations of foreign countries. This provision will help purchasers of duty-free merchandise to understand the laws and regulations which apply to those purchases. In order to preserve the value of duty-free merchandise, this subsection also provides, however, that duty-free stores may not be required to mark or otherwise place a distinguishing identifier on duty-free merchandise which would indicate that such merchandise was sold in a duty-free store.

Subsection (3)(D) provides that duty-free merchandise may be unpacked into saleable units without the necessity of further permits, such as a permit for manipulation. This provision will help to minimize the recordkeeping requirements imposed on operators of duty-free stores while also ensuring that the Customs Service has an adequate basis upon which to audit the operation of a duty-free store for compliance with the law and implementing regulations.

Subsection (3)(E) concerns the way in which delivery of duty-free merchandise may be effected. The manner and location of the delivery of duty-free merchandise to the departing passenger is an important component of the operator's efforts to provide reasonable assurance that the merchandise is exported from the United States. The legislation thus prescribes certain methods of delivery which are the exclusive delivery methods that an operator of a duty-free store may employ to convey its merchandise to the departing passenger.

The legislation provides for delivery of duty-free merchandise at international airports in one of three designated ways. An operator may use one or more of the methods of delivery at a particular location at its option, but may not use any other method. The designated delivery methods for an airport duty-free store are as follows:

(1) To the purchaser of the merchandise (or to a family member or companion travelling with the purchaser) in an airport area restricted to departing international passengers (a so-called "sterile" area).

(2) To the purchaser of the merchandise (or to a family member or companion travelling with the purchaser) at the exit point of a specific departing flight. As explained in the definition of exit point in subsection (b)(8)(F), the term "exit point" includes the gate holding area for a specific departing flight. Gate holding areas for international flights are ordinarily secure areas and the predominant mode of delivery of airport store duty-free merchandise is at the gate. The section would not affect this practice.

(3) By delivering the merchandise to the purchaser by placing it within the aircraft on which the purchaser is departing from the United States for carriage by the airline as passenger baggage (as distinct from the other two permitted delivery methods where the purchaser carries the merchandise on board the aircraft).

Typically, merchandise is delivered to the baggage storage compartment of an airplane when the circumstances at a particular airport dictate or when compliance with Customs' requirements necessitates (as, for example, where an international flight leaving the United States makes an intermediate stop in another U.S. location). The requirement that the merchandise be delivered to the airplane for carriage as passenger baggage is intended to facilitate Customs' supervision and control over the export of duty-free merchandise and also to facilitate compliance with the Customs laws and regulations in the destination country. On occasion, however, an operator of a duty-free sales enterprise may be unable to effect delivery through one of these three methods (where, for example, the purchaser changes his travel plans and departs on an earlier flight but does not advise the operator). When the operator has made a good faith effort to deliver merchandise to a departing passenger through one of the three designated delivery methods, but has been unable to do so in a specific instance (as in the example above), the operator would be allowed to make delivery through any other reasonable means, e.g., by placing the merchandise on the next available flight to the purchaser's destination. An operator may not routinely deliver merchandise to departing passengers through any method other than the three which are set forth in the statute. Regardless of the delivery method used, the operator of the duty-free sales enterprise would be required to demonstrate that the merchandise has been exported from the United States.

Delivery of duty-free merchandise in the case of border stores would be permitted only at a merchandise storage location at or beyond the exit point. This limitation is necessary because unless duty-free merchandise is delivered at a point at which the departing purchaser has no alternative but to leave the United States, there is no feasible way to assure that the goods are exported. This delivery requirement would not affect, however, the delivery of duty-free merchandise at locations approved by the Secretary of the Treasury (through action or acquiescence of the Customs Service) before the enactment of the legislation, since delivery at such locations presumably now provides sufficient assurance of exportation.

Subsection (b)(4) closely follows current language in section 555(b) of the Tariff Act of 1930. It provides that if a state, local or other governmental authority, incident to its jurisdiction over an airport, seaport, or other exit facility requires that a concession or other form of approval be obtained for operation of a duty-free store (as is commonly the case), duty-free merchandise may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free store demonstrates to the Customs Service that the required concession or approval has been obtained. When it enacted this provision several years ago, the Congress recognized the need to ensure that the interests of State and local governments are protected.

Subsection (b)(5) provides that merchandise other than duty-free merchandise may be sold in duty-free stores, except that such non-duty-free merchandise may not be commingled with duty-free merchandise in a bonded warehouse (i.e. storage) facility other than a bonded facility at which retail sales are made. The requirement that non-duty-free merchandise not be commingled with duty-free merchandise during storage (unless the location of storage is a bonded duty-free sales enterprise at which retail sales are made) will ensure that the recordkeeping responsibilities of operators of duty-free stores are explicit and that the Customs Service is able to audit compliance with those requirements efficiently.

Subsection (b)(6) confirms current practice which prohibits duty-free merchandise from being brought back to the United States under the personal exemption. Duty-free merchandise may be purchased only for use outside the Customs Territory of the United States and a traveller who returns to the United States with merchandise purchased in a duty-free store located in the United

States is obligated to declare such merchandise as if it had been acquired abroad (and, even then, the merchandise is not eligible for the personal exemption; that is, duty or tax must be paid on the merchandise).

Subsection (b)(7) establishes a separate class of bonded warehouses for duty-free stores. Under current regulations, duty-free stores are classified as Class 8, Class 2, or Class 8/2 bonded warehouses. These classifications are inadequate because duty-free stores, unlike other bonded warehouses, are essentially retail operations. Accordingly, the legislation directs the Secretary of the Treasury to create a new class of bonded warehouses for duty-free stores as part of the regulations promulgated to implement the statute. In creating this new class of bonded warehouses (and in developing the implementing regulations generally), the Secretary is to take into account the unique characteristics of the different types of duty-free stores.

Subsection (b)(8) sets forth various definitions for terms used in the legislation, including for airport stores, border stores, customs territory, duty-free sales enterprises, duty-free merchandise, exit point, and personal use. "Airport stores" are defined as duty-free sales enterprises which deliver duty-free merchandise to or on behalf of individuals departing at international airports. "Border stores" are defined as duty-free sales enterprises which deliver duty-free merchandise to or on behalf of individuals departing through a land border. "Customs territory" is defined as the customs territory of the United States and foreign trade zones. The definition of "duty-free sales enterprises" tracks current law (section 555(b) of the Tariff Act of 1930) which describes such enterprises as those which sell, for personal use while abroad, duty-free merchandise that is delivered from a bonded facility to an airport or other exit point for exportation by or on behalf of departing individuals. "Duty-free merchandise" is defined as merchandise in a duty-free store upon which neither federal duty nor tax has been assessed. "Exit point" is defined as the area in close proximty to the actual exit for departure from the United States, including the gate holding area in the case of an airport where there is reasonable assurance that duty-free merchandise delivered at the gate holding area will be exported from the customs territory. In the vast majority of cases, the gate holding area of an international airport will now provide adequate assurance that the merchandise will be exported. Only rarely is it expected that changes to a specific gate holding area would be needed in order to provide the appropriate assurance of exportation. Finally, "personal use quantities" is defined as other than resale quantities, but specifically including quantities appropriate for household or family consumption as well as for gifts to others. The personal use limitation is not intended to affect the common practice of travellers from many nations of buying gifts in the United States to be given to others upon the travellers' return home.

Section 912(c) provides that the amendments to section 555(b) of the Tariff Act of 1930 effected by the legislation take effect fifteen days after enactment.

INTERNATIONAL COFFEE AGREEMENT

(Section 922)

This section amends section 2 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356k) by striking out "October 1, 1986" and inserting "October 1, 1989", thereby extending U.S. participation in the International Coffee Agreement (ICA), effective January 1, 1987.

The purpose of this provision is to provide for continued U.S. participation in the International Coffee Agreement. Continued U.S. participation in the agreement would provide the United States with the opportunity to influence future marketing and production policies of coffee producing countries when consumers are most vulnerable. A halt in U.S. participation at this time would send a negative signal to producing countries and could trigger actions, such as efforts to form cartels, which would adversely affect the U.S. coffee industry and U.S. consumers.

The International Coffee Agreement is a multilateral agreement that presently involves 71 coffee producing and consuming countries representing an estimated 98 percent of world coffee production and an estimated 85 percent of world coffeee consumption. The present agreement, which entered into force on October 1, 1983, and remains in force through September 30, 1989, is the latest in a series of agreements that date back to 1962. The United States has been a participant in such agreements since 1962.

The objective of the agreement is to stabilize the price of coffee by means of a system of country export quotas which are decreased when prices are declining and increased when prices are rising. In periods of high prices, quotas are suspended altogether in order to encourage maximum exports. The quota system is enforced by the importing members. The agreement is administered by the International Coffee Council (ICC).

Section 2 of the International Coffee Agreement Act of 1980, initially codified at 19 U.S.C. 1356k, provided authority for U.S. implementation of its treaty obligations under the 1976 agreement. The Act was amended in 1983 to reference the 1983 agreement and authorize U.S. participation for an additional 3 years, until October 1, 1986. Among other things the Act provides that the President shall seek to protect U.S. consumers against unwarranted price increases as a result of actions by the ICA or market manipulation by two or more members of the ICA and requires reports on the operation of the ICA and trade in coffeee. This provision would authorize U.S. participation until October 1, 1989.

ENFORCEMENT OF THE RESTRICTIONS AGAINST IMPORTED PORNOGRAPHY

(Section 923)

The purpose of this section is to improve the Government's ability to prosecute cases involving the importation of pornographic material. Currently, obscenity importation offenses are prosecuted in the district in which the material is seized.

This section would allow, but not require, Customs agents to forward the seized material to the U.S. Attorney in the district to which the material was addressed in order to allow for prosecution where the material was destined to go and to reduce the workload at the major ports of entry.

This section would also lengthen the time in which forfeiture proceedings must be commenced from 14 to 30 days. This gives the Government a more realistic time frame in which to proceed. Current forfeiture law with respect to obscene material contains no express limitation on the time within which forfeiture actions must begin or be decided. The Supreme Court has interpreted the statute to include two fixed time requirements:

(1) Judicial proceedings for forfeiture of material seized under the statute are required to be instituted no more than 14 days from the time the material is seized; and

(2) The final decision in the action must be made within 60 days after the action is filed.

In addition, this section provides that no seizure or forfeiture would be invalidated for delay beyond the 30 days if the claimant is responsible for extending the action beyond the time limits or if proceedings are postponed pending the consideration of Constitutional issues. Civil forfeiture proceedings may also be stayed upon motion of the Government pending the completion of any related criminal case.

CLARIFICATION OF CUSTOMS USER FEES

(Section 924)

Section 924 adds clarifying language regarding the customs user fees. In the Budget Reconciliation Act of 1986, Congress required that the fee were to be placed in a dedicated account for expenditures for commercial operations of the Customs Service. The new language specifies that the fees are to be treated as receipts offsetting expenditures of salaries and expenses for commercial operations. The purpose is to make clear that it is inappropriate to treat the fees as revenues, as the Administration has done. In addition, the section clarifies that the user fees on passengers and conveyances are to be deposited in the same dedicated account as the ad valorem fees and, to the extent they are not needed to reimburse the Customs Service for expenses incurred in providing overtime inspectional services, they are to be used as receipts offsetting commercial operations expenditures,

PROHIBITION OF THE IMPORTATION OF CERTAIN ARTICLES PRODUCED BY CONVICT OR FORCED LABOR IN THE SOVIET UNION

(Section 925)

Under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307), goods produced abroad by convict labor, forced labor, or indentured labor under penal sanctions are not entitled to entry at any port of the United States. Section 725 makes a finding that articles under seven tariff schedule items imported from the Soviet Union are being made, wholly or in part, by convict, forced, or indentured labor, and directs the Secretary of the Treasury to prohibit their importation. An exception would permit importation if the President clarifies either that a product or products are not being made with forced labor, or that prohibiting importation of the product or products directly affects the national security interests of the United States.

The Commissioner of Customs has twice (in September 1983 and March 1984) made the determination that articles from the Soviet Union made by forced labor are now, or are likely to be imported into the United States. In both instances the Department of the Treasury ordered Customs not to implement the determination. In hearings before this Committee on July 9, 1985, November 22, 1985, and December 4, 1985, witnesses confirmed that forced labor is used in the Soviet Union to produce manufactured articles. Section 925 includes in its specification of articles to be prohibited from entry the items specified in a memorandum from the Commissioner of Customs to the Secretary of the Treasury on March 15, 1984. Nothing in this section is intended in any way to imply a limitation on the Commissioner of Customs in making determinations prohibiting the importation of other products that he has reason to believe should be barred from entry under current law and regulations.

TARE ON CRUDE OIL AND PETROLEUM PRODUCTS

(Section 926)

Section 926 amends section 507 of the Tariff Act of 1930 (19 U.S.C. 1507) to permit an allowance for all detectable moisture and impurities present in crude oil and petroleum product imports.

It eliminates the need for a costly and burdensome reimbursement procedure for both importers and the Customs Service. It would permit the Customs Service to more closely conform its procedures to current commercial practice, increase the accuracy of Federal import statistics, and permit full application of existing and future technology. Current-day technology allows the detection of greater amounts of moisture and sediment. The Committee believes that section 507, as currently written, is anachronistic and limits Customs' ability to revise its regulations to allow the application of available testing technology.

The commercial portion of petroleum transactions, both domestically and internationally, is currently conducted on a net standard volume basis, whereby the total volume of water and sediment detected in a cargo is deducted prior to calculation of a transaction volume.

Customs Service regulations (19 CFR 151.46) provide for an allowance (a deduction) for amounts of water and sediment in excess of 0.3 percent of cargo volume for crude oil imports and in excess of up to 0.5 percent water and sediment for petroleum product imports. In practice, an importer whose crude oil cargo contains 0.8 percent water and sediment, for example, is assessed duty on the 0.8 percent water and sediment. The importer is free to file a claim with the Customs Service for reimbursement of the duty paid on 0.5 percent of cargo volume, but this represents an unnecessary paperwork burden. Section 926 eliminates the need for this reimbursement procedure.

ELIGIBLE ARTICLES UNDER THE GENERALIZED SYSTEM OF PREFERENCES (GSP)

(Section 927)

In this provision, watches would remain ineligible for GSP except those watches entered after June 30, 1989, that, if given preferential treatment, would not cause material injury to watch or watch band, strap or bracelet manufacturing and assembly operations in the U.S or U.S. insular possessions. Because the data necessary to develop these criteria are not publicly available, the determination of which watches fit the criteria would be made by the U.S. Trade Representative after studying the matter and taking into account public views. In this regard, at any time after enactment of this section, any person may file a petition with the USTR for consideration by the President.

Watches, as defined in headnote 2(a) to schedule 7, part 2E of the TSUS, are timepieces suitable for wearing or carrying on or about the person. While viewed primarily as functional articles, many watches are fashion items and are sometimes considered articles of jewelry.

Conventional watches use a balance wheel and hairspring as a time base, and may or may not be battery operated. Nonconventional watches use a quartz crystal as a time base and are energized by a battery or solar cells.

Solid state electronic watches are classified under TSUS item 688.36. Other watches (conventional and electromechanical) are classified under TSUS item 715.05.

Item 688.36 has a column 1 duty rate of 4.3 percent ad valorem and a column 2 rate of 35 percent ad valorem and allows for duty free entry under CBERA unless imports are from column 2 countries.

Item 715.05 has a column 1 duty rate equal to the sum of the column 1 duty rates of the watch case and the movement. The column 2 rate is the sum of the applicable column 2 rates. The same CBERA criteria apply as for 688.36 items.

Watches classifiable under 715.05 produced or manufactured in an insular possession of the United States are eligible for duty-free entry if they conform to the quota and other requirements of headnote 6 to schedule 7, which details a rather complex program of preferences enacted in 1982, designed to assist the watch industry in the U.S. Virgin Islands.

When the Trade Act of 1974 was passed, the U.S. watch industry was considered import-sensitive. Therefore, watches were excluded from the list of articles eligible for the GSP.

U.S. imports of watches almost tripled in terms of quantity from 50 million units in 1980 to 140 million units in 1984. In terms of value, watch imports increased from $613 million in 1980 to $845 million in 1984.

The leading supplier of watches in terms of value in 1984 was Japan, accounting for $324 million, or 38 percent of the total. In terms of quantity, the leader was Hong Kong with 101 million units, or 72 percent of the total.

The effect on revenue is unknown at this time.

CUSTOMS BOND CANCELLATION STANDARDS

(Section 928)

This section establishes a requirement for the Secretary of the Treasury to publish guidelines establishing standards for setting the terms and conditions for the cancellation of bonds. The purpose of the section is to ensure uniform, reasonable, and equitable decisions by the Secretary with regard to bonds.

MARKETING OF CONTAINERS OF IMPORTED MUSHROOMS

(Section 929)

Section 929 would provide that imported preserved mushrooms would not be in compliance with the marking provisions of section 304 of the Tariff Act of 1930 unless the containers indicate in English the country in which the mushrooms were grown. This legislation would not amend any existing statute or affect any existing rates of duty on imported articles.

In the United States, about two-fifths of the mushrooms consumed are fresh, and the remainder are processed. The great bulk of processed mushrooms are canned.

U.S. imports of canned mushrooms enter in all conventional containers, sizes and styles of pack.

Since early 1981, entries of prepared or preserved mushrooms packed in a heavy salt solution in large containers (primarily 50- and 20-gallon plastic and 55-gallon steel drums) have been increasing. These are fresh mushrooms grown in the People's Republic of China (China) which have been cooked and then saturated with a heavy salt solution. Upon arrival in the United States, the mushrooms are washed and desalted before being subjected to conventional canning processes by domestic firms. Since 1980, the principal foreign suppliers of all canned mushrooms have been Taiwan, China, Hong Kong, and the Republic of Korea, with Spain and the Netherlands shipping significant amounts in 1984.

Preserved mushrooms are imported into the U.S. under 3 separate TSUS items which have rates of duty ranging from 1.3 cents per pound plus 4 percent ad valorem to 3.2 cents per pound plus 10 percent ad valorem. The column 2 rates are all the same—10 cents per pound plus 45 percent ad valorem. Articles in two of the items are eligible for GSP and those in all three are eligible for CBERA.

During 1980–84, annual U.S. sales of prepared or preserved (canned and frozen) mushrooms averaged 117 million pounds. In 1984, sales were 119 million pounds. In recent years, the leading states in production/sales of canned mushrooms included Pennsylvania, Indiana, and California, while Pennsylvania and Indiana led in frozen mushroom production/sales.

U.S. imports of prepared or preserved mushrooms increased 44 percent from 117.3 million pounds valued at $121.9 million, in 1980 to a record high of 169.1 million pounds, valued at $165.7 million, in 1984.

The leading foreign suppliers of prepared or preserved mushrooms in 1984 (and the share supplied by each) were Taiwan (37 percent), China (27 percent) and Hong Kong (13 percent), Spain (9 percent), and South Korea (7 percent). In 1984, the bulk of imported prepared or preserved mushrooms were canned mushrooms.

The enactment of this provision would likely have little or no effect on the annual revenues collected on imports of prepared or preserved mushrooms, other than potential marking duties under section 304. Any increased cost of production in changing container labels to conform to this provision would likely be minimal, resulting in no increase in the dutiable value of the finished product or that being paid by U.S. processors of imports.

CUSTOMS SERVICES AT PONTIAC/OAKLAND, MICHIGAN AIRPORT

(Section 930)

Section 930 amends section 236 of the 1984 Trade and Tariff Act to specify that the airport located at Pontiac/Oakland, Michigan, would become a reimbursable customs port. It would also eliminate the maximum number of locations that Customs may serve on a reimbursable basis.

The U.S. Customs Service discontinued its service in the early 1980's at a number of small airports as a cost-cutting measure. This move apparently disadvantaged some business interests that had come to rely upon the availability of a Customs operation at some of these locations. As a result of the pressure brought to bear by these interests, the Congress specified in the 1984 Trade and Tariff Act that the airport located at Lebanon, New Hampshire plus three non-designated other small airports (that would otherwise not qualify as a Customs location) could be provided with customs services on a reimbursable basis. Since enactment of that provision, Customs has had many requests for establishment of these locations.

The Committee recognizes that many small airports, such as Oakland/Pontiac Airport in Pontiac, Michigan, and the airport located at Lebanon, New Hampshire, presently have neither the volume nor the level of business to require the availability of full-time customs services. Therefore, the Committee directs the Secretary of the Treasury to provide customs services at the Oakland/Pontiac Airport and charge a fee based on actual hourly costs, equal to expenses incurred.

SUBTITLE C. ADMINISTRATIVE PROCEDURES FOR NON-CONTROVERSIAL TARIFF SUSPENSIONS

(Sections 941 through 944)

This subtitle establishes an administrative procedure for non-controversial suspensions of tariffs. The procedure is intended to be a supplement to the current Congressional system of granting duty suspensions. This process is intended to be used only to approve duty suspension applications that are clearly non-controversial and where granting the petition could in no way adversely affect a U.S. person or firm.

Under the Committee bill, persons who want a duty suspended would file a petition with the ITC containing sufficient information to enable the ITC to decide whether an investigation is warranted. The ITC has 15 days to determine whether to accept the petition.

If the ITC decides that an investigation is warranted it shall notify the USTR and publish notice of the investigation in the Federal Register. Self-initiation of cases by the Government will also be possible.

The ITC has 75 days to investigate whether the article that is the subject of the investigation, or whether an article which is like or directly competitive with it, is produced in the United States. It also investigates whether any domestic manufacturer intends to manufacture the article and whether the imported article is used as a substantial input in the manufacture of a product that is like or directly competitive with a domestically manufactured product. The ITC must determine whether any domestic producer would be adversely affected by duty suspension or whether any other person objects to duty suspension. The ITC would also estimate the costs of suspension. Additional factors to be considered by the ITC include whether any international trade agreements cover the article in question and whether the article is the subject of action under other U.S. trade laws.

As part of its investigation, the ITC shall provide opportunity for public comments and may hold public hearings. After completing its investigation, the ITC shall develop a preliminary report to the President. The report is to contain the information gathered in the investigation. A summary of the report will be published in the Federal Register and a non-confidential version of the report shall be made available to the public.

Thirty days after the summary of the preliminary report is published in the Federal Register, the ITC shall transmit a final report to the President, plus a summary of comments received and a transcript of any hearings held in the course of such investigation. The President must decide within 30 days following receipt of the ITC report whether to suspend the duty.

The ITC report will be reviewed by the Trade Policy Staff Committee (TPSC) and a recommendation prepared for the President. The TPSC may solicit public comments and hold public hearings.

In addition to the information received from the ITC, the President is directed to consider foreign policy, the status of international trade negotiations and any other factors he believes are relevant to this decision.

The President may only suspend the duties on the article if there is no U.S. person who would be adversely affected by the suspension and if the revenue loss from the suspension does not exceed $100 million annually.

Obtaining the suspension of duties on articles not manufactured in the United States is increasingly important to many domestic industries. When a domestic manufacturer finds there is no domestic production of a component that is used in its manufacturing process, it is forced to import the necessary raw material or component and pay the import duty. That duty increases the cost of manufacturing and lessens the competitiveness of U.S. industry. Other companies seek duty suspendions in order to import products not manufactured in the United States to supplement their product line.

Obtaining duty suspensions is extremely important for these domestic industries to remain competitive internationally.

Congress has periodically passed legislation temporarily suspending duties of such products. Congress general does so only when the suspensions are regarded as non-controversial—that is, when neither the Administration nor a domestic industry opposes the request. However, the legislative calendar has become increasingly clogged and uncertain, making it difficult to ensure timely passage of duty suspension legislation.

The purpose of the new process is to provide more expedited treatment and greater certainty for industries with non-controversial duty suspension requests. The process will take a maximum of 150 days from the initial petition to final determination by the President. The process is intended to be similar to the GSP program in that it provides for a report by the ITC and a review and recommendation to the President by the TPSC, chaired by the Office of the USTR. Agencies that now review and comment on legislation will continue to do so through the TPSC process. Three separate opportunities are provided for public comment. The President will only be authorized to grant duty suspensions if no domestic industry would be adversely affected.

SUBTITLE D. MISCELLANEOUS

STEEL IMPORTS

(Section 945)

The Steel Import Stabilization Act, Title VIII of the Trade and Tariff Act of 1984, grants the President authority to enforce the terms of bilateral arrangements limiting the export of steel products to the United States. Congress provided this authority to the President in response to President Reagan's decision in September 1984 to reject a petition for import relief to the domestic steel industry under section 201 of the Trade Act of 1974, and instead to enter into a series of bilateral restraint agreements with steel-exporting nations to reduce their exports of steel to the United States. During negotiation of these agreements, the description of steel products contained in the section 201 petition was used for the purpose of identifying the products to be included under the restraints. Among the products omitted were welded steel wire fence panels, wire fabric, and welded steel wire mesh for concrete reinforcement. Since conclusion of the agreements, exporting countries have diverted significant production and export to the United States into these products. The Committee is concerned that their omission has or will result in harm to domestic producers of these specific steel products.

This section amends section 805 of the 1984 Act to require the USTR to request that the bilateral arrangements on steel exports to the United States must include restraints on these products. If any country or the European Community refuses to expand the coverage of existing agreements to include these items, the section removes authority of the U.S. Government to agree to any request by that country for any technical adjustments or modifications to the agreement, and, if appropriate, requires that entry-by-entry certification of compliance with the agreement be required.

IMPLEMENTATION OF UNITED STATES-EC AGREEMENT ON CITRUS AND PASTA

(Section 946)

Section 946 implements tariff reductions agreed to by the United States in the Agreement between the European Economic Community (EC) and the United States, concluded February 24, 1987, with respect to citrus and pasta. The tariff reductions specified apply to certain anchovies, cheeses, satsuma oranges, olives, capers, paprika, cider, and olive oil. The reductions would be effective 15 days after the date of enactment of this bill.

In addition, this amendment establishes a mechanism for ensuring a settlement of the U.S.-EC dispute on EC subsidies on pasta by July 1, 1987, the date agreed upon for resolution of the matter. A GATT panel has found that an EC export refund on pasta constitutes an export subsidy violative of the GATT Subsidies Code. It provides that unless the case is resolved by July 1, 1987, pasta imported from the EC would be subjected to new tariffs. The amount of the tariff would be variable, equaling the value of the EC subsidy, as calculated by the U.S. Department of Agriculture on a monthly basis. The tariff would remain in place only until a negotiated settlement is reached that would eliminate or offset the EC subsidy.

The bilateral agreement with the European Community has four main elements: (1) removal of the U.S. and EC retaliatory measures that were imposed in the context of the citrus preference dispute; (2) reductions in EC tariffs on oranges, lemons, grapefruit, and frozen orange juice concentrate for specified annual quantities of those products, in settlement of U.S. claims regarding the adverse effects on U.S. exports of EC tariff preferences granted to certain Mediterranean countries on citrus products; (3) an agreement to negotiate an expeditious settlement of U.S. claims regarding EC export restitutions on pasta; and (4) an exchange of trade-liberalizing concessions in which the United States will increase the cheese quota for the EC and implement the duty reductions specified in these provisions in return for EC tariff reductions on almonds and certain peanuts.

On an interim basis, the United States (acting under previously delegated authority) and the EC have implemented all portions of this agreement except the U.S. tariff concessions that would be implemented under section 118 authority and the EC tariff reductions on lemons, grapefruit, peanuts and almonds, and the settlement of the pasta dispute. As soon as the United States implements the tariff concessions, the EC will implement its tariff reductions.

The Committee believes that the value of the EC concessions the United States will obtain fully justifies implementation of the tariff reductions by the United States. At the same time, however, the Committee is strongly concerned that the dispute over illegal EC export subsidies on pasta remains unsettled. The mechanism established by this provision is designed to give the Administration sufficient leverage to obtain a satisfactory resolution.

NO APPLICATION TO FREE TRADE AREA AGREEMENTS

(Section 947)

This section provides that no provision of this Act shall apply to the foreign party to a bilateral free trade area agreement with the United States that entered into force before January 1, 1987, in any case in which there is inconsistency between such provisions and the agreement.

The United States is currently a party to one bilateral free trade area agreement, the Agreement on the Establishment of a Free Trade Area between the United States and Israel approved and implemented on June 11, 1985. The agreement is a binding international obligation and provides reciprocal benefits to the two parties primarily through the mutual elimination of all tariff barriers to bilateral trade. This section will assure that the principle of bilateral reciprocity and mutual advantage under the agreement is maintained by not applying any provision of this Act to Israel if there is an inconsistency between a particular provision and the agreement.

PURCHASES OF U.S.-MADE AUTOMOTIVE PARTS BY JAPAN

(Section 948)

Section 948 makes a number of findings with respect to trade in automobiles and automotive parts between the United States and Japan. The large U.S. trade deficit with Japan is accounted for largely by imports of such products. Despite the fact that U.S. automotive parts producers meet increasingly rigorous requirements for quality, just-in-time supply, and competitive pricing in the U.S. market, U.S. exports of parts to Japan were below $300 million in 1986. Section 948 expresses Congress' strong support of MOSS talks on automotive parts aimed at significantly expanding U.S. opportunities for sales of original equipment and replacement parts to Japanese automotive manufacturers. It further notes that success of the MOSS talks will be measured by a significant increase in such sales and by initiation of long-term sourcing relationships between U.S. parts producers and Japanese automobile makers. Finally, section 948 directs the USTR and the Department of Commerce to report to the Congress at the conclusion of the MOSS talks on the outcome of the talks and on any agreements reached with Japan with respect to Japanese firms' purchases of U.S. automotive parts.

Members of the Committee, in numerous meetings with Japanese Government and business leaders, have repeatedly stressed the importance of increased purchases by Japanese firms of competitive U.S. products of all kinds, including automotive parts. Other Members of the Congress have worked hard in recent years to bring about increased access for U.S. firms to the Japanese automotive parts market specifically. Those efforts do not seem to be having sufficient effect on the purchasing decisions of Japanese automobile producers. Despite the fact that Japanese firms exported 2.3 million automobiles to the United States in 1986, U.S. exports to Japan of automotive parts have stagnated at a level under $300 million. Of equal concern is the fact that despite a growing level of automotive production in the United States by Japanese firms, reportedly only 20 to 30 percent of the material content of such automobiles is purchased from American suppliers. Moreover, a growing number of Japanese automotive parts producers are establishing production facilities in the United States in order to serve both Japanese and American automobile producers, a fact which could exacerbate existing trends.

The Committee has no desire to see the exclusionary business practices of Japanese automobile manufacturers transplanted to the American market. The United States is Japan's best customer, not only for automobiles, but for a wide range of other products. The clear success of Japanese automobile firms in penetrating the U.S. market makes it particularly objectionable that these firms would so strenuously resist the purchase of competitive U.S. automotive parts. This resolution is intended to reiterate the concern of the Committee and of many Members of Congress over the lack of progress on this issue. The Committee strongly supports the negotiating approach to U.S. trade problems and for that reason looks to the MOSS talks as an appropriate means for resolving U.S. concerns in the area of automotive parts trade. Establishment of an effective mechanism for monitoring purchasing transactions between U.S. automotive parts companies and Japanese automobile manufacturers is an essential component of any resolution of this problem. The Committee will follow closely the progress—or any lack thereof—in this area.

PRIVATE INITIATIVE ENHANCING SMALL BUSINESS ACCESS TO UNITED STATES TRADE LAWS

(Section 949)

Section 949 adds a new provision expressing the sense of the Congress that the corporate, legal, labor and academic communities should pursue establishment of an independent organization to provide pro bono legal assistance to small businesses in cases involving foreign unfair trade practices. The Congress has strived, through the present bill and in prior enactments, to strengthen our international trade laws. An unfortunate side effect of strengthening these laws has been to make them more complex. As they have become more complex, the cost of prosecuting a trade complaint has become prohibitive for small U.S. companies and labor groups. If a small company is financially unable to prosecute a case, the alleged unfair trade practice continues unabated, often ultimately leading to the firm going out of business or moving production offshore.

Development of a nonprofit entity to provide legal assistance in such instances will help not only these small businesses, but also overall U.S. competitiveness and the effectiveness of our trade laws. The Committee believes that the efforts of the private sector in this regard should complement the efforts of the Trade Remedy Assistance Office created in the ITC by the Trade and Tariff Act of 1984. Creation of such an entity should require no expenditure of Federal funds.

IMPLEMENTATION OF NAIROBI PROTOCOL

(Section 950)

This section would make permanent changes to the TSUS to implement the Nairobi Protocol to the earlier Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials. Such changes would become effective with respect to articles entered, or withdrawn from warehouse for consumption on or after the latest of 1) the 15th day following the date of enactment; or 2) the 15th day following the deposit of the U.S. ratification of the Protocol. The Protocol's intent is to contribute to the cause of peace through a freer exchange of ideas and articles across national boundaries. To achieve this goal, duty-free treatment would be extended to various printed materials, visual and auditory materials, tools for certain scientific instruments, and articles for blind and handicapped persons. The Protocol added new articles to the group receving duty-free treatment under the Agreement and is aimed at ending the restrictions on the type of importers eligible to obtain such benefits. Duty-free treatment will apply to subject articles retroactive to August 11, 1985 upon proper request filed with Customs.

Section 950(a) describes the purpose of the act; section 950(b) repeals the 1982 Act; and subsections (c) through (f) amend and create tariff provisions for articles to be afforded duty-free treatment pursuant to the Act.

Subsections (g) and (h) would permit the President to modify portions of the duty free treatment authorized under the Act. First, subsection (g) would empower him to terminate or narrow, or impose conditions on, the duty-free treatment granted to the tools for scientific instruments and articles for the handicapped. This authority would be available only where the duty-free treatment of a type of article has a "significant adverse impact" on all or part of a U.S. industry producing the like or directly competitive article.

All actions to change the duty treatment of covered articles could occur only after public and private parties had an opportunity to present views. The section would further deem ongoing proceedings under the 1982 act, or any continuing action under it, to be proceedings or actions under the proposed section. (This includes the investigation on hearing aids.)

Subsection (h) would permit the President to expand the scope of the duty-free treatment of the visual and auditory material covered by subsection (d), within the interest of the United States. Such action could include the removal of or change in any conditions previously imposed as to those imports. The section is intended to permit the President to move from implementing the narrower Annex C-2 to the less restrictive Annex C-1; the latter lacks the limitations on the nature of articles and type of importers eligible to claim free entry that are present in C-2. Any such action would become effective on the fifteenth day after it is proclaimed.

Subsection (i) would provide for collection of statistical information for imports of articles for the handicapped to assist in the implementation of potential actions limiting duty-free treatment under subsection (g).

The Florence Agreement was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in July 1950 and entered into force as to ten countries on May 21, 1952. The Agreement provides for the exemption from customs duties of specified publications, other information materials, and objects of cultural and artistic interest in order to promote the free exchange of ideas. The Agreement entered into force as to the United States on November 3, 1966, upon issuance of Presidential Proclamation 3754; the duty-free treatment commenced on February 1, 1967.

The Nairobi Protocol, drafted between 1973 and 1976, was opened for signature on March 1, 1977 and represents both an extension of the Agreement to additional categories of articles and application of original provisions to new products. The Protocol has eight annexes, four of them mandatory for contracting parties, covering groups of articles to receive duty-free treatment. A fifth annex has two versions, one broader than the other; the proposed legislation would implement the narrower version.

Under the Protocol, a contracting party is obligated to exempt the following articles from customs duties and other charges:

(1) printed books; printed publications and documents of a non-commercial character (Annes A)

(2) works of art and collector's pieces of an educational, scientific, or cultural character (Annex B)

(3) scientific apparatus or instruments imported by approved public or private scientific or educational institutions, (Annex D)

(4) articles specially designed for the use or advancement of the blind or other physically or mentally handicapped persons, when the article is imported by approved institutions (Annex E)

Contracting parties also agree to extend such free entry to either of the following:

(1) visual and auditory materials, including films (or negatives); sound recordings; patterns, models (except toy models), and wall charts of an educational, scientific, or cultural character; video-tapes; holograms, multi-media kits; and other materials (Annex C.1—originally adopted by the United States through the 1982 act); or

(2) the same materials, when limited to those of an educational, scientific or cultural character imported by certain entities (Annex C.2—to be implemented by the proposed legislation with the potential of moving to Annex C.1 at a later date).

Parties may choose to grant free entry to sports equipment (Annex F), musical instruments and equipment (Annex G), or material and machines used for the production of books, publications, and documents (Annex H) under specified circumstances. The United States has not adopted these three annexes.

Restrictions on importation or subsequent circulation of these articles can be applied if directly based on national security, public order, or public moral considerations. In ratifying the Agreement, the United States was permitted to attach a reservation which allowed for the suspension of any obligation under the Agreement for those imported articles covered by the Agreement that prove injurious to domestic industry producing a like or directly competitive product.

The temporary tariff treatment afforded by the Protocol was provided in Proclamation 5021 of February 14, 1983 with an expiration of August 11, 1985.

The existing column 1 tariff rates for those articles covered by the proposed legislation vary from "free" (this is the case for most of the articles) to 3.3 percent ad valorem. Approximately half of the articles are eligible for GSP and all of the articles (with the possible exception of some articles for the handicapped such as special watches) are eligible for CBERA. The temporary duty suspensions on these articles expired August 11, 1985.

QUOTA ON LAMB IMPORTS

(Section 951)

This section creates a program of import restrictions on lamb. The purpose is to provide for orderly growth in levels of imports and to stabilize the overall domestic market for lamb. It is closely patterned after the Meat Import Act of 1979, which controls imports of beef, veal, mutton, and goat. The Act is intended to provide to lamb producers the same level of protection already afforded to other U.S. lamb producers. In 1979, at the time of the last amendments to the Meat Import Act, lamb imports stood at only 1.5 percent of domestic consumption. They are now at roughly 10 percent (double the level of 1984), and exporting countries project further increases. New Zealand accounts for 75 percent of the lamb imported into the United States, with Australia providing most of the remainder. The Committee notes that the production of lamb in New Zealand is subsidized by that country's Government, and that imports from New Zealand are currently subject to countervailing duties.

This legislation is designed to prevent import surges in coming years, while still permitting reasonable growth in imports. It provides a formula to set anual quotas that will increase as the size of the U.S. market for lamb grows. Like the Meat Import Act, it has a countercyclical mechanism permitting higher levels of imports in periods of domestic shortage, while maintaining quota levels when domestic production is high. The provision establishes an import floor of 28.5 million pounds, guaranteeing that quotas will never be below that level. The Committee notes that actual 1986 imports were below this floor level.

The general quota level established by this bill for any calendar year is 24,540,000 pounds, which number must be adjusted each year by the percentage that the estimated average annual domestic production of lamb for that year and the two preceding years ("three-year moving average") increases or decreases in comparison with the average annual domestic production during calendar years 1981 through 1986. This portion of the quota formula will reflect the long-term growth of lamb supply and demand in the United States.

The formula then calls for multiplying the figure obtained above by the fraction provided by dividing the five-year moving average (the current year and the previous four) of domestic lamb production by the two-year moving average of production (the current year and the previous year). This establishes the "countercyclical" part of the formula.

This part of the formula provides a determination as to when the herd is increasing or decreasing. When the quotient is 1.0 plus, it is indicative that lamb and sheep growers are beginning the buildup phase of the production cycle and market supplies are low and prices are high. Under these conditions, the formula will work to let in more imported lamb at the time it is most needed. Conversely, when the quotient is less than 1.0, the herds are being liquidated and lamb-bearing sheep are being slaughtered. At this time, domestic supplies will be plentiful, prices will be falling, and the formula will require a reduction in imports.

Like the Meat Import Act, this section contains a requirement that the Secretary of Agriculture estimate and publish (1) the annual base quota for each calendar year as determined by the formula, and (2) for such calendar year and for each calendar quarter, the quantity of imports of lamb articles that, but for the law, would enter the United States in such calendar year. If the Secretary's estimate of such imports for such calendar year exceeds 110 percent of the annual base quota for such calendar year, the formula's import quota levels are "triggered," and the President is required by law to proclaim quotas on imports of lamb articles. However, no limitation imposed for any calendar year may be less than 28,500,000 pounds regardless of what the formula calls for. If for any quarter the Secretary estimates that the imports of lamb articles is less than 110 percent of the annual base quota, and a limitation has been proclaimed for that calendar year, such limitation shall cease to apply at the start of that quarter. However, if such limitation is in effect for the third quarter, it shall continue for the fourth quarter, unless the limitation has been suspended or the quantity increased by Presidential action.

Under subsection (e), the President may, after providing for public comment by giving 30 days notice in the Federal Register, suspend the quota or increase the total quantity of the quota, if he determines and proclaims:

(1) Such action is required by overriding economic or national security interests, giving special weight to the importance to the United States of the economic well-being of the domestic lamb industry;

(2) Supply is inadequate to meet domestic needs at a reasonable price; or

(3) Trade agreements entered into after the date of enactment of this Act ensure that the policy set forth in the bill will be carried out.

Under subsection (f), if the countercyclical portion of the formula described in the bill results in a quotient of less than 1.0 the President may not increase the annual quota unless:

(1) During a period of national emergency declared under the National Emergency Act of 1965, he determines and proclaims that such action is required by overidding national security interests;

(2) He determines and proclaims there is an inadequate supply, because of natural disaster, disease, or major national

market disruption, to meet domestic demand at reasonable prices; or

(3) Based on new data for the first two quarters of the calendar year, a revised fraction yields a quotient of 1.0 or more.

This section also provides authority to the Sectretary of Agriculture to allocate the quota among supplying countries on the basis of past representative shares of the U.S. market. However, due account may be given to special factors which may have affected trade in lambs. Such allocations are to be certified to the Secretary of the Treasury by the Secretary of Agriculture.

Title X. Agricultural Trade

CRISIS IN AGRICULTURAL TRADE

(Section 1001)

This section contains Congressional findings describing the growing crisis in U.S. agricultural trade. It states that the policy of the United States is to increase agricultural exports and support programs to make U.S. commodities and agricultural products more competitive. It further states that it is the policy of the United States to reduce expensive agricultural programs consistent with efforts to reduce the Federal deficit, but indicates that the United States will not reduce price supports and export subsidies unilaterally to the disadvantage of American farmers and agricultural exporters.

COMMODITIES FOR COOPERATOR ORGANIZATIONS

(Section 1002)

This section would permit the Commodity Credit Corporation to provide surplus commodities to cooperator organizations. Currently, the U.S. Department of Agriculture (USDA) assumes approximately one-third of the costs of cooperator programs to develop foreign markets.

FOREIGN AGRICULTURAL SERVICE (FAS) PERSONNEL

(Section 1003)

This section ensures an FAS staff of 850, including agricultural attaches posted abroad, in fiscal years 1987, 1988, and 1989. FAS is the primary organization responsible for promoting U.S. agricultural exports abroad and developing U.S. markets overseas.

Upon returning from tours of duty overseas, U.S. agricultural attaches will be required to spend the first six months in the United States in agricultural regions. Attaches will use this time to counsel farmers on methods to improve exports and on developing markets abroad. The bill also requires attaches to spend at least 60 percent of their time on market development and product promotion.

CONTRACTING AUTHORITY TO EXPAND AGRICULTURAL EXPORT PROMOTION

(Section 1004)

This section grants the USDA authority to hire foreign nationals to assist U.S. agricultrual attaches abroad.

OFFICE OF INTERNATIONAL MARKET DEVELOPMENT AND EXPORT PROMOTION

(Section 1005)

The office created by this provision is charged with developing new strategies for creating markets for U.S. agricultural exports and for coordinating all such policies. The office will also monitor the practices of foreign nations in promoting exports. The office will provide an annual report to Congress with recommendations for new promotional policies and assessment of current policies. Other new programs to be implemented by the office include a marketing-export promotion exchange program, a grain quality monitoring office, and a program evaluation unit.

NEW MARKET DEVELOPMENT

(Section 1006)

Currently, more than one-half of all U.S. agricultural promotional funds are spent in established markets in Europe and Japan. Only nine percent of such funds are spent in Latin America and Africa—newly emerging agricultural markets. This section requires one-half of new funds to be used to promote U.S. agricultural exports in developing markets. The section also requires that one-half of funds be used to promote processed agricultural exports, rather than raw commodities. The United States is losing its competitive edge in raw agricultrual exports, but there are valuable markets to be established for processed products. The provision is intended to move U.S. agriculture in that direction.

TRADE SHOWS AND EXHIBITIONS

(Section 1007)

The United States spends approximately one-third of the amount spent by Australia and Argentina per $1 billion in exports on agricultural trade shows and exhibitions. The bill would authorize new funds to double the number of trade shows USDA sponsors. The current trade show budget of $2.3 million will be increased to $8 million.

PROGRAM MANAGEMENT AND SUPPORT

(Section 1008)

This section increases USDA's current authorization for program management and support activities of the FAS from $7.47 million to $10.97 million.

MARKET PROMOTION AND TRADE DEVELOPMENT

(Section 1009)

This section increases from $22.5 million to $30 million the funds authorized for FAS attaches and support personnel in the United States. It requires one-half of new funds to be used to promote exports in developing markets.

EXPORT MARKET DEVELOPMENT ADVISORY COMMITTEE

(Section 1010)

The private sector advisory committee created under this provision will advise USDA on how to improve export promotion and market development efforts.

V. REGULATORY IMPACT OF THE BILL

The Committee states that the provisions of the Committee bill will impose no new regulatory burdens on any individual or business. The major provisions of the bill improve upon existing law in ways that do not increase regulatory burdens upon the public. In some respects, the Committee believes the bill may help to reduce regulatory burdens upon businesses. For example, the Committee anticipates businesses will be able to reduce costs by taking advantage of (1) the administrative procedure for obtaining non-controversial duty suspensions and the first regular, statutory program of authorization for duty-free sales enterprises; (2) the improved services in customs matters that will result from the increased authorization of appropriations for the U.S. Customs Service; and (3) the first statutory program to encourage private intitiatives to enhance small business access to the trade laws of the United States. These programs are found in Title IX of the bill.

Title II of the bill, relating to improving competitiveness of U.S. industries and workers, does make it more difficult for U.S. industries and workers to apply for Government benefits to assist them in adjusting to import pressure. In the case of industries, the bill requires them to show not only that they are seriously injured by increasing imports as under current law, but also how relief under the new provision will assist them in making a positive adjustment to import competition. In the case of workers, they will have to show not only that imports contributed importantly to their separation, but that they are ready, willing and able to undertake retaining. The Committtee believes these higher standards are appropriate in light of the need to convert these laws into true adjustment measures. Moreover, these provisions will actually reduce the regulatory burden to many businesses because they extend to the President new power to reduce regulatory burdens to domestic industries seriously injured by imports under Title II, and they encourage cooperation among State agencies delivering unemployment services to workers covered by the trade competitiveness assistance provisions of Title II. The bill will also help to reduce or remove burdens or restrictions on U.S. commerce through the enforcement of trade agreements and other trade actions under Title III.

Title VI of the bill, relating to improvements in trade policymaking procedures, does include requirements for the Federal Government to produce trade impact statements and to make suggestions for the creation of a National Trade Data Bank, but these provisions do not depend for their success upon increasing regulatory burdens upon any individual or business.

Moreover, the Committee states the bill will not have an impact upon personal privacy of individuals. Finally, the Committee states that the provision for trade impact statements in Title VI will increase the paperwork requirements of Federal agencies, but these requirements will not burden private individuals or businesses. No other provision of the bill will significantly increase the paperwork burden.

VI. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970 and sections 308 and 403 of the Congressional Budget Act, the following statements are made relative to the costs and budgetary impact of the bill.

The Committee has requested, but has not yet received an estimate from the Congressional Budget Office of the costs which would be incurred in carrying out the bill.

The Committee does not expect any immediate impact on revenues from the tariff reducing authority provided in the Title I of the bill. This authority is subject to future Congressional enactment, and, in any event, it is not anticipated tariff reductions will be the major effort in the trade negotiations anticipated under this bill, since the major barriers to world trade today are non-tariff barriers. Any tariff reductions resulting from these negotiations will not begin to take effect until 1993, and their effect could be delayed until 1995 if the negotiations consume the full time alloted in the bill. While it is almost impossible to estimate the revenue losses resulting from such prospective reductions, it is anticipated that the improvements in wages and profits in the United States resulting from such negotiations would to a great extent, if not entirely, offset such losses through increased internal revenue collections.

Under the trade competitiveness assistance program provided for in Title II, some increases in costs over current law can be expected beginning upon enactment, because of the expansion of benefits under current law to certain oil and gas and related workers. However, the major changes in the bill, which may not take effect for three years after enactment, will be entirely financed by a fee on imports, which is provided for in the Committee bill.

Title VII contains authorizations of appropriations for three trade agencies, the Office of the U.S. Trade Representative, the U.S. International Trade Commission, and the U.S. Customs Service. The costs of these authorizations are each year more than offset by the revenues generated from customs duties, which are collected entirely by the U.S. Customs Service. Indeed, recent information suggests that increasing appropriations for this vital agency will actually increase revenues through better enforcement of U.S. trade laws.

The tariff provisions of Title VIII of the bill each contain revenue estimates insofar as those are available.

The telecommunications provisions of Title IX are expected to result in increased wages and profits, and thus to increase revenues, but the amount of these would depend on the outcome of future negotiations which will not be resolved for as much as three years enactment. The Committee anticipates a similar impact from the provisions of Title III relating to enforcement of the international legal rights of the United States, since these provisions will tend to open foreign markets to U.S. exports, increasing the general welfare of the country over time.

Title IX also contains a new administrative procedure for proclaiming non-controversial tariff suspensions, which it is anticipated will result in small revenue losses in future years.

VII. VOTE OF THE COMMITTEE IN REPORTING THE BILL

The Committee states that the bill, S. 490, was ordered favorably reported, with amendments, by a vote of 19 yeas (Senators Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley, Mitchell, Pryor, Riegle, Rockefeller, Daschle, Packwood, Dole, Roth, Danforth, Chafee, Heinz, Durenberger, and Armstrong), and one nay (Senator Wallop).

VIII. ADDITIONAL VIEWS OF SENATOR BILL BRADLEY

The Committee bill is a good bill. It kicks off multilateral trade talks under the GATT. These talks give us the best hope of reestablishing discipline in the international trading system and opening foreign markets to U.S. exporters.

It streamlines adjustment assistance for workers displaced by imports by giving workers in import-injured industries as well as their supplying industries retraining vouchers and trade readjustment allowances. It guarantees a source of funding for adjustment assistance through a very small nondiscriminatory and nondistorting import fee that is smaller than typical daily fluctuations in the value of the dollar. I believe that GATT will accept the principle of using adjustment assistance financed by this funding mechanism as a means of helping countries adjust to change and keeping the world trading system open. In addition, the bill expedites certification of eligibility for trade adjustment assistance in cases where an industry successfully files for import relief.

Most significantly, the bill beefs up unfair trade remedies in U.S. law. It strengthens our ability to settle trade disputes and to deter further unfair foreigh trade barriers. It depoliticizes unfair trade cases and minimizes the incentive for our trading partner to short-circuit trade dispute negotiations by lobbying the President directly on unrelated grounds. At the same time it avoids back-door protectionism by terminating individual retaliatory acts after they cease to have any hope of opening markets or deterring further unfair foreign trade barriers.

In its present form, the bill has only one flaw. It is not generic. It provides special treatment for one special interest: the domestic oil industry.

The Committee adopted an amendment on Energy Security that is misguided and potentially devastating to the Nation. It replaces an Administration energy policy of inaction with one that is counterproductive and dangerous.

The energy security amendment clearly expands Presidential authority. Existing trade law gives the President broad emergency powers concerning imports which affect national security. In true emergencies, the powers are appropriate. The new provision takes these emergency powers and forces their use in situations that are neither critical nor threatening. This would signal a gross abdication of legislative responsibility, and I do not believe that is wise.

The amendment defines a national energy emergency as any instance in which oil imports exceed 50 percent of domestic demand. A 50 percent import level is, of course, arbitrary. The proponents of this amendment simply assert that such a level of imports—irrespective of the source or market conditions—would be a security threat. There is no analytical basis for a 50 percent threshold. Oil imports were 35 percent of U.S. demand in 1973 when the oil embargo first crippled us but they are at roughly the same levels today with no ill effect on the nation as a whole.

The level of oil imports does not determine U.S. vulnerability. In a U.S. oil market free of price controls, the U.S. price is the world price. Suppose we did not import a drop of crude but a disruption elsewhere caused world oil prices to double or triple. U.S. prices would also double or triple. The only policy which is effective against a supply disruption is one that provides for emergency production capacity, and not import displacement. The Strategic Petroleum Reserve is the best answer to the question of inadequate capacity. The SPR needs to be bigger, without a doubt.

In the Department of Energy's latest forecasts, a "base-case" scenario indicates that we will cross the 50 percent threshold in 1992 or '93. With their "high oil price scenario," this day of reckoning is pushed back perhaps to 1994, at an additional cost to the U.S. consumer from higher prices of well over $100 billion over the next five years. DOE's high oil price scenario is also their "low economic growth scenario," which underscores the real tradeoff that proponents of this amendment wish us to make. We can protect our domestic oil industry, if we want. But we will pay for it with lower economic growth, job loss and diminished international competitiveness.

At the only hearing on this proposal, the Finance Committee received testimony from but four witnesses. The only jobs or industry perspective was offered by Independent Producers and Royalty Owners. We haven't heard from industries whose jobs depend on low oil prices or from the elderly who live in cold places on fixed incomes.

A 50 percent import level is probably inevitable. Oil production in the lower 48 states peaked in the early 1970's. Production is unlikely to reach earlier levels, regardless of tax credits and higher prices. Alaskan oil production has likewise peaked. Barring a recession or draconian conservation measures, oil imports will inexorably rise above 50 percent.

If the 50 percent threshold ultimately triggers the quotas or mandatory conservation, we would be returning to a policy of wholesale government intervention in oil markets. It is this intervention that led to the abysmal entitlements program of the '70's. It led to the Fuel Use Act, which, ironically, we've just repealed. And it led to the long gas lines of the 1970's.

The amendment makes the President act in response to projections, as opposed to reality. As the Senate is well aware, projections are notoriously inaccurate and subject to easy manipulation. Although there is a provision which allows Congressional review, it is an abrupt one: ten days to review and disapprove or modify the President's projections by joint resolution; otherwise, the Presidential certification is binding.

The President is permitted to propose "incentives" for domestic production to counter passing the 50 percent threshold. While not defined in the legislation, such incentives could be reasonably construed to include a relaxation of federal leasing requirements, environmental standards or development restrictions, as well as rewriting the tax law. These policies would automatically be effective 90 days after submission to Congress, unless disapproved or modified by joint resolution. These incentives would do nothing to improve near-term domestic productive capacity. New leases take years to develop. The inability to muster joint disapproval would guarantee the proposal's enactment. The decontrol of natural gas prices which is one of the most contentious issues ever to face the Congress, might now become possible by executive order. I cannot believe that the Congress wishes to shift this policy making prerogative to the Executive Branch.

From the perspective of good policy and procedure, this amendment makes no sense. Why not a clean trade bill—tough, generic, fair? Strip the oil amendment and we can have one.

IX. ADDITIONAL VIEWS OF SENATORS PACKWOOD, DOLE, CHAFEE, WALLOP, DURENBERGER, AND ARMSTRONG

The bill we are reporting today reflects a significant achievement. Chairman Bentsen is to be complimented on having brought the Committee to markup promptly on a controversial, highly politically charged subject, and on having forged a much closer consensus among Members on the proper outlines for a trade bill. Overall—particularly in the areas of presidential negotiating authority, Section 301, and the antidumping and countervailing duty laws—the bill as reported is significantly improved over the original S. 490 as introduced.

Having acknowledged the many improvements in S. 490 in the markup process, we must also emphasize that there are several provisions in the bill of great concern. Principal among these for each of us is the bill's set of amendments to Section 201 of the Trade Act of 1974—the statute that authorizes the President to provide relief to an industry that the International Trade Commission (ITC) has found seriously injured by *fairly* traded imports.

Under current Section 201, the ITC first decides whether the petitioning domestic industry has been seriously injured by imports—regardless of the fairness of those imports. If the ITC does find injury, it recommends import relief to the President that it believes is sufficient to prevent or remedy the injury. The ITC remedy recommendation, however, is strictly advisory. The President, under current law, has complete discretion to modify or reject the ITC's remedy recommendation, based on a finding that the recommended import relief would contravene the national economic interest.

In most cases, S. 490 effectively eliminates this presidential discretion. Under the bill, once the ITC finds that a petitioning domestic industry is being seriously injured by imports and that import relief is likely to assist "positive adjustment" in the industry, then the President *must* impose whatever level of import relief is recommended by the Commission. The President is given only two narrow bases on which he can reject the recommendation: (a) relief would endanger the national security; or (b) it would seriously harm a domestic industry that consumes the petitioner's product.

Neither of these exceptions is likely to be available in most cases, so the effect of S. 490's Section 201 provision is to give the ITC the final say in whether a domestic industry will get relief from fairly traded imports.

We have no compliant with the bill's new provision that the ITC recommend relief likely to assist "positive adjustment" (although the precise parameters of that standard are not entirely clear). It is only logical that the ITC should be recommending relief that might do the industry some good—either in downsizing rationally or, better still, in modernizing to become competitive with imports.

But just because relief might do the industry some good does *not* necessarily mean that relief is a good idea. Import protection is never free. The costs is imposes, although usually well concealed in the economy, can be devastating.

We need only look to some of the existing protections, currently in place, to gauge the potential magnitude. Estimates of the amount that Japanese "voluntary" auto restraints have added to the price of car in the U.S. are in the $1,000 range. A soon-to-be-published major study of textiles and apparel concludes that import protection for that sector alone costs the average American household *at least* $238 per year.

Large as such costs of protection may be for the average household, the cruel fact is that they fall hardest on the poor. A study by the Federal Reserve Bank of New York found that import protection for the auto, sugar, and textile and apparel industries alone cost Americans in the lowest tax bracket roughtly $370 per year—the equivalent of a 66% increase in their federal income tax. Let there be no mistake that the import protection authorized under Section 201 is, in effect, a tax—and a highly regressive one at that.

Imposing barriers against *fairly* traded imports, as Section 201 permits, is doubly expensive. International rules require that countries imposing import restrictions under an "escape clause" such as Section 201 must provide compensation to other countries that lose exports. If no compensation is forthcoming, affected countries are entitled to retaliate. Thus—in addition to consumers—successful and completely innocent U.S. export industries may pay a large price for Section 201 relief.

The following hypothetical may seem somewhat extreme, but is entirely plausible under S. 490's provisions: The ITC finds that the U.S. auto industry is being seriously injured by imports, but that three years of a $3,000 tariff per car would assist "positive adjustment" in the industry. S. 490 would *require* the President to impose the recommended tariff (or equivalent quota protection). S. 490 would *prohibit* either the ITC or the President from taking into account any of the following potentially compelling reasons not to award relief:

1. a devastating effect on average American car buyers, especially poor ones;
2. a significant increase in inflation;
3. serious damage to a debtor nation's ability to repay loans from U.S. banks;
4. massive retaliation that successful U.S. export industries, such as agriculture, would probably face.

For a statute to prohibit consideration of such crucial factors is begging for disaster.

We should emphasize that we are *not* saying that industries that have been battered by import competition should be ignored by the federal government; there are many tools available to the Executive, such as adjustment assistance for workers, that can ease the adjustment process. Nor are we saying that import relief under Section 201 is always a bad idea. There have been and will surely be cases in which temporary import protection imposes limited costs and net yields, at the end of the process, a healthy U.S. industry that is competitive with imports. Relief should be awarded in those cases.

But those good cases can be identified only be weighing the benefits of protection for an industry against the broader national economic interest. The President is the one official uniquely situated to strike the proper balance.

Proponents of S. 490's Section 201 provisions argue that prohibiting consideration of the national economic interest is necessary in order to make the 201 process credible and attractive to potential petitioners. We strongly disagree. First, the current Administration has received ITC recommendations for import relief in six cases and has provided import relief in four of them. That suggests that the 201 process *is* credible, even under the current provisions.

More importantly, who is it that proponents of S. 490's 201 provisions are trying to entice into the 201 process? Those industries that cannot make the case that import relief to them outweighs the national economic interest? Those industries *should not* get relief, and the Congress should not be rigging the 201 statute so that they are guaranteed relief.

Each of us has heard from constituents that they want us to pursue a tough trade policy. We believe that means getting tough with *unfair* foreign trade practices. Several provisions of S. 490 respond to that concern. The Section 201 provisions of the bill, however, do not get tough with unfair trade; they get tough with *fair* trade. They get tough with the American consumer and soft on American business. We don't think that's what our constituents have in mind.

X. ADDITIONAL VIEWS OF SENATOR BOB PACKWOOD

Like several of my colleagues, I voted for this bill as an expression of support for the many improvements made to S. 490 in the markup process and for the leadership of the Chairman in crafting compromises. I share the Chairman's goal of producing a good bill that the President can sign into law. The bill as reported by the Committee has not, in my opinion, yet reached that stage. There are several improvements that should be made as we proceed through floor action and conference.

In addition to the paramount concern over the bill's Section 201 provisions, reflected in the preceding statement of additional views, I am particularly concerned about a few provisions that single out individual sectors for special treatment or protection.

SUGAR DRAWBACK

The bill provides special treatment in the sugar sector. U.S. customs laws and intenational rules permit the refund of duties paid on imports that are exported back out of the United States within a reasonable period. A special "sugar drawback" provision in the bill would expand the "reasonable" period between import and export to nearly 14 years for refined sugar or products containing sugar.

This is far from a minor special benefit. According to Administration projections, the provision could result in a revenue loss of $200 million or more. This special benefit may also be viewed by our trading partners as a violation of international rules and result in retaliation against innocent U.S. exporters. As with the lamb provision, this sugar provision can hardly be helpful to our bilateral and multilateral efforts to reduce subsidies and promote discipline in world agricultural trade.

TARIFF PROCLAMATION AUTHORITY

I was also disappointed that the Committee's bill failed to include authority for the President to proclaim tariff reductions in the course of multilateral negotiations, such as the Uruguay Round talks recently initiated. Presidents have had such tariff proclamation authority in all previous GATT rounds and have found the authority very useful in reaching mutually beneficial agreements rapidly. I believe this issue could have benefitted from much more careful consideration, both in the Committee's hearings on S. 490 and in markup.

TRADE ADJUSTMENT ASSISTANCE

I support the thrust of the Trade Adjustment Assistance (TAA) provisions in S. 490. The bill's emphasis on worker retraining and improved coordination between the various government programs to assist workers is to be commended.

However, I do have two major concerns with S. 490's TAA provisions. First, the bill requires that TAA be funded with a small fee on all imports. Recognizing that the consistency of such a fee with U.S. international obligations is questionable at best, the bill directs the Administration to undertake negotiations in the GATT to obtain approval for such a fee. However, the fee goes into effect in two years regardless of whether international agreement is achieved. The result is likely to be retaliation or similar (but perhaps larger) fees imposed on U.S. exports.

Second, the TAA provisions were amended in markup to include special benefits for the oil and gas industry. The provision expands coverage to workers and firms in a significantly broader range of companies and businesses than would be allowed in any other industry. Many energy-related firms have experienced severe difficulties recently. But so have many firms in the steel, lumber and footwear sectors. I do not see why special rules ought to be applied to the workers and firms in one industry, particularly when it is done at the expense of deserving workers and firms in other industries.

Oil Security Policy

Perhaps most troublesome is another major special interest provision for the oil and gas industry. That section of the bill purports to establish a national oil security policy. I agree that this country must pursue a coherent and comprehensive energy policy, but I have grave doubts that the bill accomplishes that goal.

My concerns are three. First, I believe that setting an arbitrary ceiling on the level of oil imports focuses our policies in the wrong direction. Second, I believe the extent to which the bill delegates to the President powers previously reserved to and exercised by Congress represents virtual abrogation of Congressional prerogatives and responsibilities in the legislative process. Finally, and perhaps most importantly, that abrogation, in addition to being unwise policy, is likely unconstitutional.

My objections to a policy of arbitrarily limiting oil imports are amply reflected in the separate Additional Views of Senator Bradley. My concerns about delegation of powers and unconstitutionality may be partly addressed by the sponsors during floor action. Nevertheless, I believe that these latter two issues are so fundamental to our legislative process that they should not pass without comment.

1. DELGATION OF POWERS

Current Section 232 of the Trade Expansion Act of 1962 provides that the President may take such action as he deems necessary to "adjust imports" of a product if he determines that imports of the product threaten national security. The Courts have ruled that the President's powers under Section 232 include imposition of an oil import fee but not imposition of a gasoline tax. The distinction drawn was that Presidential actions under Section 232 must have *the direct effect* of reducing imports, rather than a mere "indirect" effect. Beyond these two examples, however, the scope of Presidential power under current Section 232 is not clearly marked.

The proponents of the oil security provision argue that the provision will not significantly increase Presidential discretion. I disagree. Under the bill, the President would be empowered:

a. to utilize all powers currently within the law;

b. to take energy conservation actions;

c. to expand our Strategic Petroleum Reserves; and

d. to expand production incentives for domestic oil and gas, including tax incentives.

If the changes made by the bill were not intended to *vastly* increase the scope of the President's prerogatives, the addition of b, c and d above would obviously be unnecessary and would in fact be redundant. The only conclusion is that the President's powers under the oil security provision would be far broader than they are under present law.

In addition, the President's opportunities to use those powers would be greatly enhanced. Current law powers are *emergency* powers only; that is, they can only be used when imports threaten national security. Under the bill, the powers *must* be used any time imports exceed an arbitrary ceiling. While no one would deny that the President should have emergency powers flexible enough to deal with threats to national security, the fact that oil imports exceed 50% does not necessarily constitute a threat to national security.

Congress must ask itself whether it is wise to delegate such a broad and essentially unspecified set of powers to the President. The mechanism which the bill establishes for Congress to overrule Presidential action is deceptively simple and probably useless. Under the bill, Congress may block Presidential action by means of a joint resolution. However, a joint resolution may be vetoed, and the veto could only be overridden by a ⅔ vote of both Houses. Thus, a vote of ⅓ plus one of either House would sustain the veto and bless Presidential action. Congress should think long and hard before it abrogates its traditional and jealously guarded authority and responsibility in this area. In my opinion, it would be foolhardy to do so.

2. CONSTITUTIONALITY

One cornerstone of our constitutional system is the concept of separation of powers. We all hear, as students and at other times throughout our lives, that each of the three coordinate branches of government is limited in its authority, and that the powers of each, while overlapping at times, are typically reserved on an exclusive basis to that particular branch. We hear also how the drafters of the Constitution created this system in order to establish checks and balances against the runaway exercise of power by one branch of government at the expense of the others.

It is ironic that, in the year we are celebrating the bicentennial of this fundamental document, Congress is embarked on an exercise which runs totally contrary to the concept of separation of powers we all profess to cherish. Despite this longstanding constitutional arrangement, the bill would permit the President to impose broad changes in the energy and tax laws of the United States which could only be rejected by a ⅔ vote of both Houses of Congress. I have little doubt that this novel arrangement is an unconstitutional delegation of legislative power. The powers which the President could exercise under the bill are virtually limitless, and are not guided by statutory standards for determining which Presidential actions are appropriate.

I recognize that the courts have been reluctant in recent years to challenge Congressional delegations of power to the President. However, if any delegation is ever going to be subject to challenge, this one is it. Unfettered Presidential authority is triggered by a *Presidential projection* that imports will exceed an arbitrary ceiling. If there is *any* meaningful limitation on delegation of legislative authority to the Executive, this provision surely exceeds that limitation.

I believe that we on the Finance Committee have a high responsibility to insure that legislation we approve is well conceived and considered. This provision meets neither standard.

XI. ADDITIONAL VIEWS OF SENATOR WILLIAM V. ROTH, JR.

I strongly support Senator Packwood's efforts to assure that the President continues to be required to consider the overall "national economic interest" in deciding whether to approve import restrictions in section 201 cases.

I am pleased by several of the changes in section 201 approved by the Finance Committee. S. 490 focuses section 201 import relief more sharply on encouraging industry adjustment during the period of import relief. This is a useful step. American industries sometimes do need time to adjust to import competition, as demonstrated by the well-publicized experience of Harley Davidson and by our experience with aid to Chrysler. The adjustment process in S. 490 will help to rejuvenate U.S. companies injured by imports.

But I am deeply concerned about another change made by the Finance Committee. Under S. 490, the President would be required in section 201 cases to impose quotas and tariffs recommended by the ITC, with only two narrow exceptions—where restrictions endanger national security or would seriously injure a U.S. industry that consumes the imported product. Other potential costs—such as loss of agricultural exports, job losses for workers in other industries, harm to U.S. export industries and hardships to American consumers—could not even be considered, by the ITC or the President.

This is a fundamental and dangerous change in section 201. It is important to remember that section 201 cases do not involve any of the unfair trade practices, such as foreign import barriers, dumping, government subsidies, or violations of U.S. patents and copyrights. Section 201 is intended to provide industries facing tough—but legal—import competition with a temporary period of relief, to allow them to take action to adjust to the imports. Because section 201 does not involve unfair practices, existing international and U.S. law provides that quotas and tariffs be imposed in 201 cases only when the overall benefits outweigh the costs.

The Finance Committee bill would transform section 201 by elevating the special interests of the petitioning industry over the national interest. By forbidding both the ITC and the President from balancing the benefits of quotas or higher tariffs to one industry against the costs of protection to other Americans, S. 490 makes the judgment that protection should be imposed in an effort to make an industry competitive regardless of the costs of doing so. If enacted, the special interest will be the rule, and the national interest won't even be an exception.

What are these other American interests that would be ignored?

First, S. 490 ignores the possible negative effects on agriculture or other competitive sectors of the U.S. economy. Under international law, a foreign country against whom we impose section 201 protection is entitled to receive compensation (in the form of lowered U.S. tariffs on other products) or to retaliate against U.S. exports. This means that, while the petitioning industry will benefit from import restrictions, other American industries, including agriculture, will face greater import competition or reduced export opportunities. Thus, in the effort to save jobs in one sector, basically automatic section 201 relief could eliminate even more jobs in agriculture or in another industrial sector. Retaliation is usually aimed at U.S. farm products or competitive growth industries. But the Finance Committee bill would not allow us to consider these other interests, to make sure there are more American winners than losers.

Second, S. 490 ignores the jobs of others in the U.S. economy—such as retailers, distributors, port and transportation workers—who could be hurt by import restrictions. As a result, again quotas and tariffs could be imposed even when they cost far more American jobs than are saved or created.

Finally, S. 490 ignores the interests of American consumers. Import restrictions almost always result in higher prices and reduced availability of consumer goods. Yet, S. 490 forbids both the ITC and the President from taking these costs into account in deciding whether to approve import restraints. It is inconceivable that Congress would order the construction of a major public works project, and impose a tax to pay for it, without knowing the cost of the project or the burden of the tax. Yet, that is precisely what S. 490 would require: import relief for one industry likely to be funded by higher prices, without any consideration of how much additional money will be spent by consumers, whether that burden will fall on the wealthy or the poor and, ultimately, whether those costs far exceed any conceivable benefits to be derived by the petitioning industry.

I am not suggesting that import restrictions should never be imposed under section 201 where they could result in higher prices. I do believe, however, that there are cases where those costs are so great relative to any benefits that can be derived from the quotas or tariffs, that it's a bad deal for America. And I am firmly convinced that it is unfair and unwise to prevent the President from asking the right question in these cases: Not whether import restictions are a good deal for one industry, but whether they are a good deal for America.

The amendment I expect Senator Packwood to offer when the Senate considers S. 490 would solve these problems. It would allow the President to consider all U.S. interests—to balance all of the costs and benefits—to ensure that import restrictions are good for America.

Let me be clear that the Packwood amendment would not prevent the President from granting import relief when relief makes sense. In weighing the national economic interest, the President would assess a number of factors that support relief, such as the economic and social costs to workers and communities if relief is not provided. The President would be free to impose restrictions when the needs of the petitioning industry outweigh the costs of job losses in other industries and higher prices.

I urge my colleagues to support the Packwood amendment to restore "the national economic interest" standard for section 201 import relief. That is the best way to assure that U.S. trade policy is a winning strategy for America.

WILLIAM V. ROTH, Jr.

XII. ADDITIONAL VIEWS OF SENATOR JOHN HEINZ

I support this bill, but I fear that in Committee's rush to produce a bill that appears to have a broad consensus we may have lost sight of what has to be the only justification for a trade bill—whether it will produce a meaningful change in the status quo.

To put it in the bluntest terms, we are in terrible shape. The trade deficit has been a steady parade of new records each year. Worse, the current account has moved into sustained and growing deficit, a debt that will mortgage our children's future for years to come. That this swamp of red ink has grown during and in spite of a spectacular fall in the dollar's value suggests that the real world operates far differently from the world of economics textbooks. The "J" curve is in fact shaped more like an "L".

Beyond this aggregate perspective, a look at specific sectors demonstrates the dramatic decline of manufacturing, as imports make inroads in areas far beyond what we dreamed of only a few years ago. We are used to discussing the import problems of steel, textiles and apparel, and footwear. Those are not new developments. But what about machine tools, semiconductors, computers and telecommunications? What about service industries like construction? There are not our classic "low-tech" industries where economists cheerfully, but erroneously, talk about comparative advantage slipping away. (In steel and textiles, for example, neither of which are low-tech in any meaningful sense of the term, American producers are competitive with most other producers.) These are industries of the future—the sectors on which the next generation of our economy will be based; yet they are slipping away from us just as surely as the "old" industries have been eroding.

Examining the developing desert of our manufacturing sector is not an abstract exercise. These changes have eaten into people's lives and their futures by eroding income and self-respect. In 1985, three years after the recession's trough, both family and household incomes were still below their 1973 peak. Indeed, American workers had lower real earnings in 1986 than they had in 1961, twenty-five years earlier.

Here in Washington, far away from any assembly lines, it is all too easy to get caught up in debates about exchange rates, the budget deficit, and questions of macroeconomic principle. We too quickly forget that there are real people behind those esoteric arguments—the workers who have made this country what it is.

They are entitled to decent jobs, decent meals, and good homes. Their children deserve an education. For thousands of workers, however, our trade policy has turned the American dream into a nightmare of lost jobs, lost opportunities and lost lives. To someone who has built his piece of the dream brick by brick on the assembly line, it is small comfort to tell him he can get a new job in the service sector. He knows better than we that one-third of those new jobs are part time and that all of them, on average, pay nearly 40 percent less than the industrial jobs that are being lost. He knows first hand that we are slipping backwards, not going forward. He knows, for example, that in 1973 it cost a worker 21 percent of his monthly pay for a mortgage on a new home. In 1984 it was 44 percent, meaning that thousands of workers and their families cannot afford to buy a home.

These figures illustrate the failure of six years of benign neglect of the international economy. The solution has to be to change—to do things differently than we have been doing them. The Administration on the other hand, understandably wants a bill that will allow them to do exactly as they have been doing for six years. That was their strategy on the 1984 trade bill, and it worked brilliantly. When the Senate considered the conference report on the Trade and Tariff Act of 1984, I expressed my disappointment with the result:

> * * * we have * * * missed a golden opportunity to put these issues on the table, to identify them, as problems of the future if not the present and to signal our determination that we and our trading partners address them. * * *
>
> The problem with the bill is not what is in it but rather what is missing from it * * * We may have opened the door to more imports entering this country and done little to promote our exports over the resistance of our trading partners, but real free trade is not that one-way street into this country. Free trade is a collective adherence to market principles and a determination to abjure the neo-mercantilism that plagues the international economic system. And that is a confrontation we have skillfully but tragically postponed in this bill.

These comments have proved prophetic. It is now three years later and we are much worse off; precisely because we have continued to pursue the same inappropriate policies. We have reached the point where more of the same is not good enough. It is time for a change, and I am confident that the full Senate will judge this bill by that standard. Unfortunately, at this point the bill does not clearly meet that standard in several important respects.

UNFAIR TRADE PRACTICES

First, the bill reported by the Committee once again misses an opportunity to attack unfair trade practices more aggressively through reform of our antidumping and countervailing duty laws. We should not forget the purpose of these laws. They address unfair trade—market distorting practices nations have committed not to engage in through their signing of the GATT Codes.

These laws are not punitive statutes. The duties imposed are compensatory, designed to offset the effect of the market-distorting practice. Thus these laws are ultimately market-reinforcing because they encourage nations not to subsidize and companies not to dump. Tightening these laws tightens market discipline without punitive action against the offenders.

Moreover, these statutes require an injury test. In other words, a finding of dumping or subsidy by itself is not sufficient to permit any action (except in the relatively infrequent case of a subsidy complaint against a country that has not signed the Subsidies Code). The ITC must also determine that a domestic industry has been materially injured or threatened with injury.

The antidumping and countervailing duty laws were last rewritten eight years ago. Since then there has been a growing number of cases, and the system has become routinized as a growing body of lawyers become familiar with it and learn how to use it to their clients' advantage. In other words, people are learning how to evade these laws—the practice of diversionary dumping is an excellent example. This is neither an unusual nor unexpected development; what would be unusual would be our failure to respond to it. We need to plug loopholes and unintended consequences in the law that have been discovered and exploited over the past eight years.

The Administration routinely opposes any advances in these laws on the grounds that the proposals violate GATT rules. I believe that objection is simply wrong, and that even a cursory reading of the applicable Codes will demonstrate it. Unfortunately, the Committee never had the opportunity to consider or debate this issue, having been presented with a fait accompli based on a one-sided presentation of the argument.

DIVERSIONARY DUMPING

One particularly important part of this evasion problem is diversionary dumping. It occurs when products that are sold at dumped prices are further processed or are used as components in "downstream" products.

Diversion is already a problem:

imports of screw machine products, which are made from steel bar, have increased about 50 percent since 1979;

imports of nine key categories of forgings have increased by almost 75 percent since 1981;

imports of ball and roller bearings have increased by over 25 percent above the 1978–1983 average; and

overall, the steel content of U.S. imports increased 135 percent from 1977 to 1984.

Diversion is becoming more serious:

the European Community more than doubled its shipments of cold finished bar when restraints were placed on that product's raw material, hot rolled bar;

a number of schemes have surfaced recently in which steel from countries under quota agreements is to be diverted for processing in nonagreement countries;

a 1983 dumping duty of 9.79 percent on carbon steel wire rod from Trinidad and Tobago was evaded by shipping the wire rod to the Bahamas for processing into wire;

Japanese fiber producers have sought to avoid dumping duties on spun acrylic yarn of between 18 and 29 percent by shipping raw fiber to less developed Southeast Asian countries for processing into yarn. The yarn was then exported to the U.S. as a product of the LDC, eligible for duty-free treatment;

Korean producers of photo albums are attempting to avoid paying dumping duties of over 60 percent by, among other things, shipping components to other countries for assembly.

The original diversionary dumping provision in S. 490 would have allowed the use of a constructed value analysis (a standard Commerce Department technique for figuring foreign market value of allegedly dumped products) in cases where it is alleged that a manufacturer had purchased at a price less than their "foreign market" value, materials or components of the product he makes and ships to the U.S., and that such inputs are major components routinely used in the manufacture of the end product.

In the interest of administrability, the provision would be applicable only in cases where the inputs themselves are also subject to an outstanding dumping order or are covered by a suspension agreement or voluntary restraint (where there had previously been at least a preliminary affirmative determination).

In calculating the constructed value of the finished product, the margin of dumping on the input would be factored in. To do that, Commerce would use the "best available evidence". Respondents, of course, would have full opportunity to present their evidence and cost figures. Some additional time would be provided for this kind of investigation, and a number of other qualifying conditions would have to be met.

The provision in S. 490 also authorized the International Trade Commission (ITC) to monitor increases in imports of downstream products likely to be vehicles for diversion. Where large (15 percent or more) dumping or subsidy duties have been imposed on input products—or where a suspension agreement is used to settle a dumping or subsidy case involving a large (15 percent or more) preliminary determination of unfair trading—U.S. producers would be able to identify to the Commerce Department downstream products that use the dumped or subsidized inputs as major raw materials or components.

Commerce would then determine which of those products qualify under the statutory test and refer its list to the ITC. The ITC in turn would monitor imports of those products, analyze the data, and give public notice of those cases in which imports from a foreign country increase by more than 5 percent in any quarter. Following such notice, the domestic industry concerned or the Commerce Department could institute an investigation into the possibility of dumping or subsidization.

It is my judgment, as well as that of others, that this proposal is consistent with current GATT rules. The Dumping Code expressly permits the use of constructed values where there is a "compensatory arrangement" between the exporter and a third party (Article 2, para. 5). Selling a component to an exporter at a dumped price is clearly such a compensatory arrangement. The constructed value method involves a calculation of the cost of production based on factor inputs, and it allows Commerce to disregard any component cost that does not fairly reflect the true cost of that particular input. Obviously, that would be the situation in a case of diversionary dumping.

The Code also permits adjustments in prices for "differences affecting price comparability." (Article 2, para. 6). Also, when a con-structured value approach is used, "allowance for costs" may be made. These provisions allow the use of a component's fair value, rather than the dumped price, when the constructed value approach is used.

Finally, the Administration's objection appears to be based on the Code's requirement that the price of the imported finished product be compared with a "like" product for sale in the producer's home market. Under the S. 490 provision, that is exactly the comparison that would be made. The price to the U.S. purchaser of the end product will be compared to the constructed value of a like end product sold in the country of manufacture. This is the classic "apples-to-apples" comparison. All diversionary dumping means is calculating the value of the like end product on the basis of the true value of its inputs, including any dumped components. Not to make that calculation is to give our trading partners a license to evade our laws.

These objections are unfortunate because they leave a major hole in our unfair trade practice laws, and we have learned by painful experience over the past few years how easily and quickly those holes can be exploited.

The Committee's decision to replace diversionary dumping primarily with a retooled version of the Administration's anti-circumvention proposals was also ill-advised. The original Administration proposal was virtually useless since it was limited only to related party transactions and had a number of other constraints that effectively excluded most of the diversionary dumping activity now occurring. The version ultimately adopted was broadened marginally from the original, primarily by dropping the related parties restriction, although it is maintained as a "factor" to be considered. Even so, the provision remains only a modest and partial step that will be inadequate in dealing with this growing problem.

OTHER UNFAIR TRADE PRACTICE ISSUES

With respect to other unfair trade practice changes, the bill is notable more for its omissions than its inclusions. Proposals for a private right of action in dumping cases were not included, and a multiple offenders provision was so heavily compromised it bears little or no resemblance to the original. While some minor matters on sham transactions, 90-day review authority, Subsidies Code commitments, and critical circumstances have been included, on the whole the Committee's product fails to address the major problems of current law.

The provision on critical circumstances has some potential to be useful because it makes clear that the Commerce Department can find and declare circumstances prior to a preliminary determination of dumping or subsidization. Even though action (suspension of liquidation and imposition of retroactive duties) would not be taken until later, the announcement of the intention to impose such remedies should have a trade stabilizing effect that will help prevent import surges. In its discussion, the Committee evidenced considerable concern over the fact that these laws provide remedies very late in the process and permit only prospective relief (problems that a private right of action provision would address). Although the Committee declined to take any major action to meet its concerns in this area, the critical circumstances provisions should be of some modest help.

CUMULATION

The Committee also addressed the injury question by adopting language already in the House bill. This was probably a wise procedure, since it should produce a common legislative history and lessen the opportunities for ITC commissioners to find ambiguities in the law. Indeed, this language is in part intended to leave no doubt as to Congress' intention with respect to injury determinations, and is a reflection of Congressional frustration with the efforts of some commissioners to so reinterpret the law through the use of alternative criteria as to make it unrecognizable.

In its work on injury, the Committee did not deal with the cumulation question, although the House did so. A recent decision by the Court of Appeals for the Federal Circuit (*Bingham* v. *Taylor*) makes clear that the Commission must cross-cumulate in dumping and subsidy cases. This should finally stop the refusal of some commissioners to adhere to the same finding by a lower court. The House language, however, is marred by the inclusion of an exception for negligible imports, a term which some would no doubt improperly stretch to extremes. I hope this unfortunate phrasing can be corrected in conference.

INDUSTRY ADJUSTMENT TO IMPORTS

S. 490's amendments to the section 201 process are modeled after legislation I first introduced in 1983 (S. 849, the Industrial Revitalization Act). Its premise is a quid pro quo in which the government provides the requested import relief (assuming injury is found) in return for a plan and individual company commitments to take steps to adjust to the new competitive conditions. Such adjustment could be steps to improve productivity and restore competitiveness, or it could be a shift of resources to other kinds of activities—possibly different product lines in the same sector or even an entirely different industry—or simply a reduction or shutdown of production capacity.

I am pleased to see the Committee retain the basic elements of this approach, although it has weakened both the quid and the quo significantly. The President is no longer as locked into import relief as he ought to be, and the industry—labor and management—is no longer obligated to work together to develop and agree on an industry-wide adjustment plan.

There are practical reasons for this change which I understand and acknowledge. I remain concerned, however, that this balanced approach will be subject to attack from those who would destroy its basic symmetry by maintaining the significant adjustment burden on industry while removing an obligation on the President's part to respond.

This is not the time to debate this issue in detail, but I would point out that this provision is in fulfillment of and consistent with our obligations under GATT Article XIX, which acknowledges the right of a country to impose temporary import relief to facilitate adjustment. Taking action under this statute does not violate any international rules or obligations, but it does provide an opportunity to act positively on behalf of import-impacted industries. As we have discovered on the Finance Committee, in a growing number of cases industries are coming directly to Congress for relief because they don't see much understanding of their problems in either current law or the Administration's record. That is a course of action we should seek to avoid whether it involves large industries or small, but we can only avoid it if we have GATT-consistent laws that provide constructive and viable adjustment alternatives. The section 201 provisions of S. 490 are in that category, and I hope they will be supported on the floor.

ADVERSARIAL TRADE

S. 490 deals only in passing with what the Committee and others have begun to refer to as adversarial trade—the mercantilist practices of other nations that deny their trading partners equal access to their markets while they exploit access to our market to the fullest. They upset the global balance of trade that would be achieved if the laws of comparative advantage were allowed to prevail. Instead, they artificially create comparative advantage by protecting and subsidizing their infant industries until they are large enough to launch global search and destroy missions against competitors.

The chief offender in this regard is Japan, although other newly industrializing countries on the Pacific Rim have learned from the former's highly successful example.

The Committee discussed this problem at some length, finally deciding not to act. I have no doubt the Senate will face this issue on the floor, either in the form of the Gephardt Amendment or some other approach. The most appropriate approach, in my judgment, meets the following criteria:

(1) it is based on foreign barriers to U.S. access, not only on the size of the bilateral deficit;

(2) its favored remedy is an opening of Japanese or other markets to U.S. products, a trade expanding remedy; and

(3) it is action-forcing; that is, it will lead to concrete results rather than more negotiations.

I believe these criteria represent not only the soundest policy but also the most politically viable course of action, and I plan to support amendments that will put them into law.

OIL SECURITY ACT

Finally, S. 490 is marred by the inclusion on the last day of markup with no notice, of a special interest item for the oil industry. This provision contains one of the broadest grants of legislative authority to the executive that the Congress has ever seen. Stripped of its rhetorical gloss, it provides that when a selected level of oil imports is likely to be breached, probably 50 percent, the President must submit an energy plan to the Congress. That plan can contain anything he wants—an oil import fee, mandatory conservation measures, gas rationing, tax law changes, even an entire economic and deregulation program. If Congress fails to act on this program in 90 days, it becomes law without Congressional approval.

Leaving aside the question of whether any actions are warranted solely on account of oil imports reaching a specified level, the proposal would literally surrender lawmaking authority to the President, and would do it in an area of direct and major consequence to large segments of the American economy. I oppose an oil import fee—the most likely outcome of this bill—but I oppose more strongly the notion that Congress should cede its constitutional right to act explicitly on these matters. This is a dangerous provision, not just from the standpoint of sound and carefully developed energy policy, but from the standpoint of the balance of power between the legislative and executive branches, and I hope the full Senate will reject it.

CONCLUSION

Finally, on a more general note, I cannot help but recall that our work on the trade bills of 1979 and 1984 featured dire predictions of protectionism, retaliation and unadministrability. We will no doubt hear the same charges about this bill. We will hear them no matter what we do. Yet the system has survived since 1979, and the bureaucracy has coped with these earlier changes. Unfortunately, we have long since reached the point where that system is failing us—trade distorting practices have increased rather than decreased.

We can redress that failure in this trade bill and in the process create a more open market-oriented trading system. That is good for us and good for everyone else as well. It is what free trade is all about. What the Senate should resist is the arguments of those who believe that free trade is a one way street that opens our markets to others with no concern about their markets being open to us. S. 490 properly focuses on reducing other nations' protectionist barriers, and it makes at least a modest attempt to promote market-oriented trading practices globally. When the Senate debates the bill, I will seek to address the latter deficiency. I will also urge senators to judge the bill and amendments to it by the standard I described at the beginning of these remarks: present policy is unacceptable; does a proposal make any real change in the status quo?

JOHN HEINZ.

XIII. ADDITIONAL VIEWS OF SENATOR MALCOLM WALLOP

I did not support the views of the Committee on Finance Concerning the omnibus trade bill. I objected because many of the bill's provisions (1) would provoke our trading partners into retaliating against U.S. exports or enact mirror legislation (2) were inconsistent with our international obligations (3) undermined our Uruguay Round initiatives aimed at bringing improved discipline to the international trading system, extending that discipline to new areas such as services and intellectual property, and dealing with the urgent problems of trade in agriculture products (4) did not facilitate the competitiveness of U.S. industry.

While I am pleased that some provisions of S. 490 have been improved I still believe the bill goes too far. It seriously restricts Presidential authority, is unnecessarily antagonistic, does not seriously address the third-world debt problem, has many protectionist provisions, and sets rigid time frames which will make it difficult for our trading partners who are negotiating in good faith to factor in domestic political considerations. I believe S. 490 creates more problems than it solves by not recognizing that most of our trade deficit is caused by macroeconomic factors and cannot be legislated away.

The most troublesome areas in which improvement is essential are: mandatory retaliation, restricting discretion, readjustment assistance, antidumping and countervailing duty laws, and negotiating authority. Each of these areas fail to meet the four criteria that I outlined above. First, they do not improve our competitiveness, second, they do not conform to our international obligations, third, they do not enhance our leverage at the Uruguay Round, last and most importantly, they are likely to provoke retaliation or other market closing responses in other nations.

One must not forget that the price of protection for one industry is rarely free to other elements of society. American business and consumers will be the ones to shoulder the burdens of increased cost of the product, require compensation to our trading partners and potential retaliation against previously unaffected industries.

MALCOLM WALLOP.

XIV. ADDITIONAL VIEWS OF SENATOR WILLIAM L. ARMSTRONG

For more than a year now, trade legislation has been viewed by many as the panacea to reverse the United States' trade deficit. We are left with the impression that if Congress passes legislation that is tough enough, our current trade deficit will begin to disappear as if by magic, and the U.S. will regain its position as the world's trade leader.

Frankly, such thinking amounts to little more than hot air and smoke. No single piece of legislation can achieve that delicate balance between the needs, perceived and real, of domestic interests, and the political realities of trading in today's world markets. The issues are too complex and interwoven, and the viewpoints are too divergent to arrive at an overall solution that satisfies the majority of those affected without causing serious problems elsewhere.

Having said that, the legislation reported out of the Senate Finance Committee contains provisions that will be affected in improving our trading position, and therefore I voted for it. The bill is far from perfect. I still have reservations about several specific issues which I hope can be resolved. Of particular concern is the fact that the language granting authority to the President to negotiate bilateral and multilateral agreements without trading partners is not as strong as it has been in the past, and is not as strong as it should be.

The Constitution states that Congress has the authority to raise revenue and regulate commerce with foreign nations. Therefore, while the President is free to negotiate trade agreements with foreign countries, he does not have exclusive authority to implement them. Today, with few exceptions, he needs the support of Congress in order to put the agreements into effect.

Over the history of this nation, Congress has delegated to the President the varying degrees of authority to negotiate and enter into trade agreements—in a sense giving the President's a pre-negotiation seal of approval. When the President has returned to Congress with tentative agreements, Congress has generally approved them. However, there have been some notable exceptions that led Congress to alter the manner in which negotiating authority is granted.

The Trade Act of 1974 provided extensive authority to the President to negotiate and enter into reciprocal trade agreements with foreign governments in anticipation of the Tokyo Round of Multilateral Trade Negotiations under the General Agreement of Tariffs and Trade (GATT). The Trade Act provided five-year negotiating and proclamation authority which was due to expire on January 2, 1980. It provided an additional two years of residual authority to negotiate necessary adjustments and corrections. Since that time, negotiating authority has been extended, however, proclamation authority was not.

It is particularly important to note that the 1974 Trade Act granted proclamation authority to the President which gave our negotiators a freer hand under which to enter into agreements with out trading partners. This authority has not been provided in the Senate Committee bill. I believe that the absence of his broader discretion—proclamation authority—is a serious flaw that weakens our negotiators' hands, thereby announcing to the world that Congress is not fully on-board behind agreements that may be reached during the coming Uruguay Round of negotiations.

Another defect that I see in the negotiating authority provisions relates to "fast track" procedures. The 1974 Trade Act changed the earlier process by which Congress approved agreements. Prior to 1974, a legislative veto mechanism was used under which the President submitted the agreements and implementing executive orders to Congress, and if Congress did not reject the proposals within a specified time period, they went into effect.

The 1974 Trade Act required a Congressional consultation process for non-tariff barrier and other trade-distorting matters. However, the language was written in such a way that it was likely to assure Congressional approval and the implementing legislation would be considered under expedited, or "fast track" procedures.

At the time, the Administration expressed concerns about the new process, however it eventually accepted it because the consultations and resulting expedited consideration of a final agreement indicated to our trading partners that the Administration negotiators had the full support of Congress behind them.

While the Finance Committee bill provides for consultations and "fast track" procedures, the authority is not nearly as broad as the 1974 Trade Act. Instead, the Committee bill provides authority only until 1994, however if Congress chooses, it can revoke "fast track" authority in 1992—effectively leaving our negotiators without a leg to stand on during the last stages of the Uruguay Round of GATT negotiations. In light of the fact that these negotiations have the potential to effect every area of trade concerns that the U.S. has—from unfair trade practices to dispute settlement to tariff rates—I believe that the President's authority should be as strong as possible. While I hope that those in Congress in 1992 will have the good sense to support the President if progress is being made, I am concerned that our less than full support may hamper bold, creative negotiating at a very critical time.

Still, I am encouraged by positive changes in the Committee bill. Clearly, some type of "fast track" procedure was obsolutely necessary for serious negotiations. That the Committee has provided, and the discussions during the markup indicate that the members of the Committee are working for agreement and conciliation which bodes well for the future.

In addition, the Committee deleted the requirement for Congressional approval of a statement of trade policy as the condition for providing "fast track" procedures. This is a positive step that will permit our negotiators to proceed without additional delays and without giving away too much about our negotiating position.

The United States has an excellent opportunity to benefit from the Uruguay Round in all sectors—manufacturing, agriculture and services. It is critical that Congress provide strong support to the President in order to get new, effective and enforceable agreements and to open foreign markets for U.S. exports. These agreements are more likely to improve America's trading position than any trade bill can hope to do.

As hopeful as I am about the Committee bill's actions on negotiating authority, there are other portions of the bill that are of great concern. Perhaps most worrisome is the creation of a new entitlement program that has every ingredient for budget busting disaster.

On the surface, the goal of the new trade adjustment assistance entitlement program sounds ideal. It seeks to provide funding to help workers who have lost their jobs due to imports. As commendable as the program seems on the surface, the costs may very well exceed the benefits.

The new entitlement program is estimated to cost roughly $300 million. The money will come from an across-the-board tariff that is tentatively estimated to be about one percent on all goods entering the U.S. However, during the markup when I suggested that I could envision the program costing $400 million or even $4 billion, my concerns fell on deaf ears. Oddly enough, later in the discussions we discovered that the tariff rate could rise as high as one full percentage point at a cost of—yes—$4 billion. When I offered an amendment to cap the amount of money available for the program, the amendment was defeated.

Who will pay for this $300 million program that may end up costing $4 billion? The American consumer is the first victim. As imports enter the United States, the tariff will be added to the price of the product, making every item more expensive. And most significantly, the new tariff will hit low income Americans worse because a larger part of their monthly budget is spent on basic necessities that are often imported. Low-priced clothing and shoes are good examples.

Consumers are not the only ones who will pay for the trade adjustment assistance program. The other likely victims are our healthy, export industries. Just recently, I met with a foreign ambassador who expressed deep concern over the Committee-passed tariff for funding the new entitlement program. He and others believe the Committee's action was outrageous, illegal under current multilateral agreements, and likely to result in similar legislation being adopted by other countries. The result of "mirror" legislation will be tariffs tacked on to goods exported from the U.S. which will inevitably lead to fewer U.S. exports. So while we are assisting one group of Americans, we will be harming some of our most productive, export-oriented industries. To me, such action is self-defeating and will only serve to further damage our trading ability and our economy as a whole.

A second objectionable provision strengthens current law to reguire the President to grant import relief with only very limited exceptions. The domestic supplier does not have to prove the existence of unfair trading practices. In essence, the President must impose retaliatory action against a country once the ITC makes a recommendation if an American industry is being harmed by "fair" trade, even if by doing so, U.S. consumers are seriously damaged.

Suppose a U.S. company has become inefficient in its operation, and another manufacturer in another country is able to fairly, squarely offer the same good at a lower price. The Committee bill would require the President to impose a quota or tariff or other action that effectively raises the price of that imported good to the U.S. This almost guarantees the granting of concessions to the foreign country or retaliatory action by that country against U.S. manufacturers exporting our goods there.

I am deeply concerned about such a prospect because my home state of Colorado could be seriously affected as would the rest of the nation. In contacting a number of exporters and trade-related associations in Colorado, I am pleased by the spirit of optimism that prevails when I mention trade. Unlike many states, Colorado is seeing something of a boom in a number of areas, and the state has risen from 42nd to 32nd in dollar amount of exports in the last five years. Those industries that are doing well and expecting to expand include machinery, chemicals, metals, instruments and technical products, and services. While we still have our problems, the prospects are good as long as we work for legislation that will provide for market expansion rather that protectionism.

It is my belief the nation is better off with the Committee trade bill than without it. While it has its problems, it has a number of positive provisions that override my reservations.

Most importantly, the United States has much to gain from a successful round of multilateral negotiations. Last year, U.S. Trade Representative Clayton Yeutter testified before the Finance Committee about his intentions for the Uruguay Round. He said:

> The new round is our path to more competitiveness, more trade, more jobs and more growth in the next century. If we aim too low * * * we are sure to fail. If we work diligently, aggressively and cooperatively, the United States can succeed.

I am confident that Ambassador Yeutter is right, and therefore, I support the Committee trade bill which, despite its flaws, will provide him with the tools to succeed.

WILLIAM L. ARMSTRONG.

XV. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 490, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

* * * * * * *

TRADE ACT OF 1974, AS AMENDED

TABLE OF CONTENTS

TITLE I—NEGOTIATING AND OTHER AUTHORITY

[CHAPTER 8—BARRIERS TO MARKET ACCESS]

CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE PRACTICES

* * * * * * *

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

[CHAPTER 1—IMPORT RELIEF

CHAPTER 1—IMPORT RELIEF

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—FOREIGN IMPORT RESTRICTIONS AND EXPORT SUBSIDIES

* * * * * * *

* * * * * * *

* * * * * * *

CHAPTER 5—MISCELLANEOUS PROVISIONS

* * * * * * *

SEC. 104A. NEGOTIATING OBJECTIVES WITH RESPECT TO TRADE IN SERVICES, FOREIGN DIRECT INVESTMENT, AND HIGH TECHNOLOGY PRODUCTS.

* * * * * * *

(c) HIGH TECHNOLOGY PRODUCTS.—Principal United States negotiating objectives shall be—

* * * * * * *

(d) FOREIGN-DEVELOPED TECHNOLOGY.—

(1) IN GENERAL.—Principal United States negotiating objectives under section 102 of this Act and section 103 of the Omnibus Trade Act of 1987 shall be to eliminate or reduce foreign barriers to equitable access by United States persons to foreign-developed technology, including barriers, acts, policies, or practices which have the effect of—

(A) restricting the participation of United States persons in government-supported research and development projects,

(B) denying equitable access by United States persons to government-held patents,

(C) requiring the approval or agreement of government entities, or other forms of government intervention, as a condition for the granting of licenses to United States persons by foreign persons (except for approval or agreement which may be necessary for national security purposes to control the export of critical military technology), and

(D) otherwise denying equitable access by United States persons to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

(2) DOMESTIC OBJECTIVES.—In pursuing the objectives described in paragraph (1), the United States shall take into account the policies of the United States Government in licensing or otherwise making available to foreign persons technology and other information developed by United States laboratories.

[(d)**]***(e)* DEFINITION OF BARRIERS AND OTHER DISTORTIONS.—For purposes of subsection (a), the term "barriers to, or other distortions of, international trade in services" includes, but is not limited to—

* * * * * * *

SEC. 123. COMPENSATION AUTHORITY.

(a) Whenever any action has been taken under **[**section 203**]** *chapter 1 of title II or chapter 1 of title III* to increase or impose any duty or other restriction, the President—

* * * * * * *

(b)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 70 percent of the existing rate of duty.

* * * * * * *

(4) Any concessions granted under subsection (a)(1) shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant import relief under section [203(h)] *203(b)(3)(E).*

* * * * * * *

(e) The provisions of this section shall apply by reason of action taken under chapter 1 of title III only if the President determines that action authorized under this section is necessary to meet the international obligations of the United States.

* * * * * * *

SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

* * * * * * *

(b) While there is in effect with respect to any article any action taken under section [203] *204* of this Act, or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862 or 1981), the President shall reserve such article from negotiations under this title (and from any action under section 122(c)) contemplating reduction or elimination of—

* * * * * * *

SEC. 131. INTERNATIONAL TRADE COMMISSION ADVICE.

* * * * * * *

(e) In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

(f) In providing any advice, or making any reports, under this section, the Commission shall identify any article that is sensitive, or potentially sensitive, to imports and shall include a statement of whether any reduction, elimination, or modification of duties under consideration with respect to such article may injure the domestic industry producing such article or an article like, or similar to, such article.

SEC. 134. PREREQUISITES FOR OFFERS.

[In any negotiations] *(a) In any negotiations* seeking an agreement under chapter 1 or section 123 or 124, the President may make an offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restriction, or other barrier to (or other distortion of) international trade, with respect to any article only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the International Trade Comnmission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under section 103 of the Omnibus Trade Act of 1987, and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

(1) the United States International Trade Commission,

SEC. 135. ADVICE FROM PRIVATE OR PUBLIC SECTOR.

* * * * * * *

(m) NON-FEDERAL GOVERNMENT DEFINED.—The term "non-Federal government" means—

* * * * * * *

(n) A predominant number of the members of any advisory committee established under this section may not belong to the same political party.

* * * * * * *

SEC. 141. OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

* * * * * * *

(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Office for the purpose of carrying out its functions [$13,582,000 for fiscal year 1986; of which not to exceed $80,000] *$15,248,000 for fiscal year 1988, of which not to exceed $69,000* may be used for entertainment and representation expenses. *Of the amounts appropriated under the authority of this paragraph for fiscal year 1988, $1,000,000 shall remain available until expended.*

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.

* * * * * * *

SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.

* * * * * * *

(b) DEFINITIONS.—For purposes of this section—

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements submitted to the House of Representatives and the Senate under

[section 102] *section 102 of this Act or section 104 of the Omnibus Trade Act of 1987* and which contains—

*   *   *   *   *   *   *

SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.

(a) CONTENTS OF RESOLUTION.—

(1) For purposes of this section, the term "resolution" means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of the President under [section 203] *Chapter 1 of title II* of the Trade Act of 1974 transmitted to the Congress on ———.", the blank space being filled with the appropriate date; and

*   *   *   *   *   *   *

SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.

*   *   *   *   *   *   *

(a) Whenever, pursuant to section 102(e), [203(b)] *204(c)(2),* 302(a), 402(d), or 407 (a) or (b), or section 303(e) of the Tariff Act of 1930, a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections [203(c),] *section 204(b)(2),* 302(b), 407(c)(2), and 407(c)(3), the 90-day period referred to in such sections shall be computed by excluding—

*   *   *   *   *   *   *

[CHAPTER 8—BARRIERS TO MARKET ACCESS]

CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

SEC. 181. [ACTIONS CONCERNING] *ESTIMATES OF* BARRIERS TO MARKET ACCESS.

(a) NATIONAL TRADE ESTIMATES.—

(1) IN GENERAL.—[Not later than the date on which the initial report is required under subsection (b)(1),] *For calendar year 1987, and for each succeeding calendar year,* the United States Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962 shall—

(A) identify and analyze acts, policies, or practices *of each foreign country* which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons), and

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services; [and]

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A)[.]*; and*

(C) make an estimate of—

(i) the value of additional goods and services of the United States, and

(ii) the value of additional foreign direct investment by United States persons,

that would have been exported to, or invested in, each foreign country during such calendar year if each of such acts, policies, and practices of such country did not exist.

(2) CERTAIN FACTORS TAKEN INTO ACCOUNT IN MAKING ANALYSIS AND ESTIMATE.—In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party; [and]

(D) any advice given through appropriate committees established pursuant to section 135[.]*; and*

(E) the actual increase in—

(i) the value of goods and services of the United States exported to, and

(ii) the value of foreign direct investment made in,

the foreign country during the calendar year for which the estimate under paragraph (1)(C) is made.

(3) ANNUAL REVISIONS AND UPDATES.—The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—On or before the date which is one year after [the date of the enactment of the International Trade and Investment Act, and] *March 31 of 1988, and of* each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) *for the calendar year preceding such calendar year (which shall be known as the "National Trade Estimate") to the President,* to the Committee on Finance of the Senate and to the Committee on Ways and Means of the House of Representatives.

*   *   *   *   *   *   *

SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.

(a) IN GENERAL.—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional

committees under section 181(b), the United States Trade Representative (hereinafter in this section referred to as the "Trade Representative") shall identify those foreign countries which—

(1) have the most egregious acts, policies, or practices that—

(A) deny—

(i) adequate and effective protection of intellectual property rights, or

(ii) fair or equitable market access to United States persons that rely on the protection of intellectual property rights, and

(B) have the greatest adverse impact in the markets of such foreign country, or in other international markets, on United States products; and

(2) have not entered into good faith negotiations, or are not making significant progress in bilateral or multilateral negotiations, to provide—

(A) adequate and effective protection of intellectual property rights, or

(B) fair and equitable market access to United States persons that rely on the protection of intellectual property rights.

(b) CONSULTATION; FACTORS TO CONSIDER.—For purposes of identifying foreign countries under subsection (a), the Trade Representative shall—

(1) consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officers of the United States Government; and

(2) take into account information from such sources as may be available to the Trade Representative or submitted to the Trade Representative by interested persons, including information contained in reports submitted to Congressional committees under section 181(b) and petitions submitted under section 301.

(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—The Trade Representative may at any time—

(1) revoke the identification of any foreign country made under subsection (a), or

(2) identify any foreign country under subsection (a),

if information available to the Trade Representative indicates that such action is appropriate.

(d) PUBLICATION.—The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) and shall make such revisions to the list as may be required by reason of action under subsection (c).

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

[CHAPTER 1—IMPORT RELIEF

[SEC. 201. INVESTIGATION BY INTERNATIONAL TRADE COMMISSION.

[(a)(1) A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the International Trade Commission (hereinafter in this chapter 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 petition shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition.

[(2) Whenever a petition is filed under this subsection, the Commission shall transmit a copy thereof to the Special Representative for Trade Negotiations and the agencies directly concerned.

[(b)(1) Upon the request of the President or the Special Representative for Trade Negotiations, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Commission shall promptly make an investigation to determine whether 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 producing an article like or directly competitive with the imported article.

[(2) In making its determinations under paragraph (1), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

[(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry;

[(B) with respect to threat of serious injury, a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned; and

[(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

[(3) For purposes of paragraph (1), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

[(A) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production,

[(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and

[(C) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

[(4) For purpose of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

[(5) In the course of any proceeding under this subsection, the Commission shall, for the purpose of assisting the President in making his determinations under sections 202 and 203, investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports.

[(6) In the course of any proceeding under this subsection, the Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act, 1921, section 303 or 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

[(c) In the course of any proceeding under subsection (b), the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

[(d)(1) The Commission shall report to the President its findings under subsection (b), and the basis therefore and shall include in each report any dissenting or separate views. If the Commission finds with respect to any article, as a result of its investigation, the serious injury or threat thereof described in subsection (b), it shall—

> [(A) find the amount of the increase in, or imposition of, any duty or import restriction on such article which is necessary to prevent or remedy such injury, or
>
> [(B) if it determines that adjustment assistance under chapters 2, 3, and 4 can effectively remedy such injury, recommend the provision of such assistance,

and shall include such findings or recommendation in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which were submitted in connection with each investigation.

[(2) The report of the Commission of its determination under subsection (b) shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also 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.

[(e) Except for good cause determined by the Commission to exist, no investigation for the purpose of this section shall be made with respect to the same subject matter as a previous investigation under this section, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

[(f)(1) Any investigation by the Commission under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act) which is in progress immediately before such date of enactment shall be continued under this section in the same manner as if the investigation had been instituted originally under the provisions of this section. For purposes of subsection (d)(2), the petition for any investigation to which the preceding sentence applies shall be treated as having been filed, or the request or resolution as having been received or the motion having been adopted, as the case may be, on the date of the enactment of this Act.

[(2) If, on the date of the enactment of this Act, the President has not taken any action with respect to any report of the Commission containing an affirmative determination resulting from an investigation under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act), such report shall be treated by the President as a report received by him under this section on the date of the enactment of this Act.

[**SEC. 202. PRESIDENTIAL ACTION AFTER INVESTIGATIONS.**

[(a) After receiving a report from the Commission containing an affirmative finding under section 201(b) that increased imports have been a substantial cause of serious injury or the threat thereof with respect to an industry, the President—

[(1)(A) shall provide import relief for such industry pursuant to section 203, unless he determines that provision of such relief is not in the national economic interest of the United States, and

[(B) shall evaluate the extent to which adjustment assistance has been made available (or can be made available) under chapters 2, 3, and 4 of this title to the workers and firms in such industry and to the communities in which such workers and firms are located, and, after such evaluation, may direct the Secretary of Labor and the Secretary of Commerce that expeditious consideration be given to the petitions for adjustment assistance; or

[(2) if the Commission, under section 201(d), recommends the provision of adjustment assistance, shall direct the Secretaries of Labor and Commerce as described in paragraph (1)(B).

[(b) Within 60 days (30 days in the case of a supplemental report under subsection (d) after receiving a report from the Commission containing an affirmative finding under section 201(b) (or a finding under section 201(b) which he considers to be an affirmative finding, by reason of section 330(d) of the Tariff Act of 1930, within such 60-day (or 30-day) period), the President shall—

[(1) determine what method and amount of import relief he will provide, or determine that the provision of such relief is not in the national economic interest of the United States, and whether he will direct expeditious consideration of adjustment assistance petitions, and publish in the Federal Register that he has made such determination; or

[(2) if such report recommends the provision of adjustment assistance, publish in the Federal Register his order to the Secretary of Labor and Secretary of Commerce for expeditious consideration of petitions.

[(c) In determining whether to provide import relief and what method and amount of import relief he will provide pursuant to section 203, the President shall take into account, in addition to such other considerations as he may deem relevant—

[(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

[(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapters 3 and 4;

[(3) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other consideration relative to the position of the industry in the Nation's economy;

[(4) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

[(5) the effect of import relief on the international economic interests of the United States;

[(6) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

[(7) the geographic concentration of imported products marketed in the United States;

[(8) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

[(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

[(d) The President may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 201(b) with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report.

[SEC. 203. IMPORT RELIEF.

[(a) If the President determines to provide import relief under section 202(a)(1), he shall, to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 202(c) to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

[(1) proclaim an increase in, or imposition of, any duty on the article causing or threatening to cause serious injury to such industry;

[(2) proclaim a tariff-rate quota on such article;

[(3) proclaim a modification of, or impositions of, any quantitative restriction on the import into the United States of such article;

[(4) negotiate orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

[(5) take any combination of such actions.

[(b)(1) On the day on which the President proclaims import relief under this section or announces his intention to negotiate one or more orderly marketing agreements, the President shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the President differs from the action recommended to him by the Commission under section 201(b)(1)(A), he shall state the reason for such difference.

[(2) On the day on which the President determines that the provision of import relief is not in the national economic interest of the United States, the President shall transmit to Congress a document setting forth such determination and the reasons why, in terms of the national economic interest, he is not providing import relief and also what other steps he is taking, beyond adjustment assistance programs immediately available to help the industry to overcome serious injury and the workers to find productive employment.

[(c)(1) If the President reports under subsection (b) that he is taking action which differs from the action recommended by the Commission under section 201(b)(1)(A), or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon the adoption by both Houses of Congress (within the 90-day period following the date on which the document referred to in subsection (b) is transmitted to the Congress), by an affirmative vote of a majority of the Members of each House present and voting, of a concurrent resolution disapproving the action taken by the President or his determination not to provide import relief under section 202(a)(1)(A).

[(2) If the contingency set forth in paragraph (1) occurs, the President shall (within 30 days after the adoption of such resolution) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was recommended by the Commission under section 201(b).

[(d)(1) No proclamation pursuant to subsection (a) or (c) shall be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the proclamation.

[(2) Any quantitative restriction proclaimed pursuant to subsection (a) or (c) and any orderly marketing agreement negotiated pursuant to subsection (a) shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period which the President determines is representative of imports of such article.

[(e)(1) Import relief under this section shall be proclaimed and take effect within 15 days after the import relief determination date unless the President announces on such date his intention to negotiate one or more orderly marketing agreements under subsection (a) (4) or (5) in which case import relief shall be proclaimed and take effect within 90 days after the import relief determination date.

[(2) If the President provides import relief under subsection (a) (1), (2), (3), or (5), he may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such import relief.

[(3) If the President negotiates an orderly agreement under subsection (a) (4) or (5) and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (h), provide import relief under subsection (a) (1), (2), (3), or (5).

[(4) For purposes of this subsection, the term "import relief determination date" means the date of the President's determination under section 202(b).

[(f)(1) For purposes of subsections (a) and (c), the suspension of item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article shall be treated as an increase in duty.

[(2) For purposes of subsections (a) and (c), the suspension of the designation of any article as an eligible article for purposes of title V shall be treated as an increase in duty.

[(3) No proclamation providing for a suspension referred to in paragraph (1) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the application of item 806.30 or item 807.00.

[(4) No proclamation which provides solely for a suspension referred to in paragraph (2) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the designation of the article as an eligible article for the purposes of title V.

[(g)(1) The President shall by regulations provide for the efficient and fair administration of any quantitative restriction proclaimed pursuant to subsection (a)(3) or (c).

[(2) In order to carry out an agreement concluded under subsection (a)(4), (a)(5), or (e)(2), the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of article covered by such agreement. In addition, in order to carry out any agreement concluded under subsection (a)(4), (a)(5), or (e)(2) with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

[(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

[(h)(1) Any import relief provided pursuant to this section shall, unless renewed pursuant to paragraph (3), terminate no later than the close of the day which is 5 years after the day on which import relief with respect to the article in question first took effect pursuant to this section.

[(2) To the extent feasible, any import relief provided pursuant to this section for a period of more than 3 years shall be phased down during the period of such relief, with the first reduction of relief taking effect no later than the close of the day which is 3 years after the day on which such relief first took effect.

[(3) Any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, for one 3-year period if the President determines, after taking into account the advice received from the Commission under subsection (i)(2) and after taking into account the considerations described in section 202(c), that such extension is in the national interest.

[(4) Any import relief provided pursuant to this section may be reduced or terminated by the President when he determines, after taking into account the advice received from the Commission under subsection (i)(2) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest.

[(5) For purposes of this subsection and subsection (i), the import relief provided in the case of an orderly marketing agreement shall be the level of relief contemplated by such agreement.

[(i)(1) So long as any import, relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition) and upon request of the President shall make reports to the President concerning such developments.

[(2) Upon request of the President or upon its own motion, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the extension reduction, or termination of the import relief provided pursuant to this section.

[(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

[(4) In advising the President under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the Commission shall take into account all economic factors which it considers relevant, including the considerations set forth in section 202(c) and the progress and specific efforts made by the industry concerned to adjust to import competition.

[(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

[(j) No investigation for the purposes of section 201 shall be made with respect to an article which has received import relief under this section unless 2 years have elapsed since the last day on which import relief was provided with respect to such article pursuant to this section.

[(k)(1) Actions by the President pursuant to this section may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

[(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 201(b)(3)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in providing import relief, if any, which may include actions authorized under paragraph (1).]

CHAPTER 1—IMPORT RELIEF

SEC. 201. INVESTIGATIONS OF INJURY BY THE UNITED STATES INTERNATIONAL TRADE COMMISSION.

(a)(1) A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the United States International Trade Commission (hereinafter in this chapter referred to as the "Commission") by any entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The petition shall include—

(A) a statement describing the specific purposes for which import relief is being sought, which shall include facilitating the orderly transfer of resources to alternative uses, enhancing competitiveness, or other means of positive adjustment to new conditions of competition, and

(B) a plan to promote positive adjustment to import competition.

(2) Whenever a petition is filed under this subsection, the Commission shall transmit a copy of the petition to the United States Trade Representative and the agencies directly concerned.

(b)(1) Upon the request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own initiative, or upon the filing of a petition under subsection (a)(1), the Commission shall promptly ini-

tiate an investigation to determine whether 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 of serious injury, to the domestic industry producing an article like or directly competitive with the imported article.

(2) In making determinations under paragraph (1), the Commission shall take into account all economic factors which the Commission considers relevant, including (but not limited to)—

(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate domestic production facilities at a reasonable level of profit, and significant unemployment or underemployment within the industry;

(B) with respect to the threat of serious injury—

(i) a decline in sales or market share in the domestic industry concerned;

(ii) a higher and growing inventory in the domestic industry concerned (whether maintained by domestic producers, importers, wholesalers, or retailers);

(iii) a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned;

(iv) any combination of coordinated foreign government actions, whether carried out severally or jointly, that—

(I) are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist the beneficiary to become more competitive in the export of any class or kind of merchandise, and

(II) causes, or threatens to cause, serious injury to the domestic industry concerned;

(v) the existence of preliminary or final affirmative antidumping or countervailing duty determinations under section 303 or title VII of the Tariff Act of 1930 with respect to any merchandise that is produced by the domestic industry concerned;

(vi) the extent to which firms in the domestic industry concerned are unable to maintain existing levels of expenditures on research and development; and

(vii) the extent to which the United States market is the focal point for diversion of exports of the article that is the subject of the investigation by reason of restraints on—

(I) exports of such article to, or

(II) imports of such article into,

the markets of any foreign country;

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers; and

(D) the presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) shall not necessarily be dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industry.

(3) For purposes of paragraph (1), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production,

(B) may, in the case of domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and

(C) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(4) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

(5) In the course of any proceeding under this subsection, the Commission shall, for the purpose of assisting the President in making his determinations under sections 204 and 205, investigate and report on efforts made by firms and workers in the industry to make a positive adjustment to import competition.

(6) In the course of any proceeding under this subsection, the Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(7) For purposes of this section, the term 'significant idling of productive facilities' includes the closing of plants or the underutilization of production capacity.

(8) For purposes of this section, imports of like or directly competitive articles by domestic producers in an industry shall not be considered a factor indicating the absence of serious injury, or threat of serious injury, to such industry.

(9) In the course of any proceeding under this subsection, the Commission shall examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry concerned. The findings of such examination shall be included in the report submitted by the Commission to the President under section 203(a).

(10) In making a determination under paragraph (1), the Commission shall take into account the condition of the domestic industry over the course of the relevant business cycle and shall not aggregate the causes of declining demand associated with a recession or

economic downturn in the United States economy into a single cause of serious injury or threat of injury.

(c)(1) In the course of any proceeding under subsection (b), the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

(2)(A) At any time after a plan promoting the positive adjustment of the domestic industry to import competition is submitted under subsection (a)(1), any—

(i) firm in the domestic industry,

(ii) certified or recognized union or group of workers in the domestic industry,

(iii) local community,

(iv) trade association representing the domestic industry, or

(v) any other person or group of persons,

may, individually, submit to the Commission commitments regarding their individual efforts to promote the positive adjustment in the domestic industry to import competition.

(B) If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall seek to obtain, on a confidential basis, commitments from persons and entities described in subparagraph (A), that the Commission considers appropriate, regarding actions such persons and entities intend to take to promote a positive adjustment in the domestic industry to import competition.

(d) The Commission shall make the determination required under subsection (b)(1) by no later than the date that is 150 days after the date on which—

(1) the petition is filed under subsection (a)(1), or

(2) the date on which—

(A) the request or resolution is received by the Commission under subsection (b)(1), or

(B) the motion to initiate the investigation is adopted by the Commission under subsection (b)(1).

(e)(1) If a domestic industry was the subject of an investigation under this section that resulted in any action described in section 204(d)(1)(A) being taken under section 204, no other investigation may be initiated with respect to such domestic industry while such action is in effect or during the period beginning on the date on which such action terminates that is equal in duration to the period during which such action was in effect.

(2) Except for good cause determined by the Commission to exist, no investigation of the same subject matter as any previous investigation under this section that did not result in any action being taken under section 204(d)(1)(A) may be initiated under this section during the 1-year period beginning on the date on which the Commission submitted its report under section 203(a) to the President on the results of such previous investigation.

SEC. 202. PROVISIONAL RELIEF UPON FINDING OF CRITICAL CIRCUMSTANCES OR FOR PERISHABLE PRODUCTS.

(a)(1) If, during the course of an investigation initiated under section 201, the President finds that critical circumstances exist, the President shall impose provisional measures consisting of any ac-

tions authorized under section 204(d)(1). Such provisional measures shall remain in effect until—

(A) the date on which the measures are revoked by the President,

(B) the date on which the Commission makes a negative determination under section 201(b)(1), or

(C) the date that is 90 days after the date on which the Commission makes an affirmative determination under section 201(b)(1).

(2) For purposes of this subsection, critical circumstances exist if a significant increase in imports (actual or relative to domestic production) over a short period of time has led to circumstances in which a delay in the imposition of relief would cause damage to the domestic industry that would be difficult to remedy at the time relief could be provided under section 204.

(b)(1) If a petition is filed with the Commission under section 201(a) regarding a perishable product and alleges injury from imports of that product, the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under paragraph (3) with respect to such article.

(2) Within 14 days after the filing of a petition with the Secretary of Agriculture under paragraph (1)—

(A) if the Secretary of Agriculture has reason to believe that—

(i) a perishable product is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product, and

(ii) emergency action is warranted,

the Secretary of Agriculture shall advise the President and recommend that the President take emergency action, or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and advise the petitioner.

(3) Within 7 days after the President receives a recommendation submitted by the Secretary of Agriculture under paragraph (2) to take emergency action, the President shall—

(A) issue a proclamation that—

(i) proclaims an increase in, or imposition of, any duty on the article causing serious injury, or threat of serious injury, to such industry,

(ii) proclaims a tariff-rate quota on such article,

(iii) proclaims a modification of, or imposition of, any quantitative restriction on the imports into the United States of such article, or

(iv) takes any combination of the actions described in clauses (i), (ii), or (iii), or

(B) publish a notice of his determination not to take emergency action.

(4) Any emergency relief proclaimed under paragraph (3) shall cease to apply—

(A) on the day on which actions described in section 204(d) take effect;

(B) on the day on which the President makes a determination not to take action under section 204;

(C) in the case of a negative determination under section 201(b), on the day the Commission's report is submitted to the President under section 203(a); or

(D) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

SEC. 203. REPORT AND RECOMMENDATIONS OF THE COMMISSION ON THE INVESTIGATION.

(a) The Commission shall submit to the President a report on the determination made by the Commission under section 201(b)(1) with respect to each investigation conducted under this section. Such report shall include—

(1) an explanation of the basis for such determination,

(2) any dissenting or separate views of any Commissioner with respect to such determination,

(3) a transcript of the hearings conducted with respect to such investigation, and

(4) any briefs submitted with respect to such investigation.

(b)(1) If the determination made by the Commission under section 201(b)(1) with respect to imports of an article is affirmative, the Commission shall—

(A) recommend actions, if any, which the President is authorized to take under section 204(d)(1) (other than an action described in section 204(d)(1)(A)(iv)) that are likely to assist the domestic industry in making a positive adjustment to import competition,

(B) include in the report submitted under subsection (a)—

(i) the recommendation made under subparagraph (A),

(ii) an explanation of the basis for such recommendation,

(iii) a description of the short-term and long-term effects implementation of such recommendation is likely to have on—

(I) the domestic industries that consume any product of the domestic industry that is the subject of the determination made under section 201(b)(1),

(II) other domestic industries, and

(III) consumers, and

(iv) any dissenting or separate views of the Commissioners voting with respect to such recommendations.

(2) For purposes of this chapter—

(A) A positive adjustment to import competition occurs when—

(i) the domestic industry is able to compete successfully with imports after actions taken under section 204 terminate, or

(ii) the domestic industry experiences an orderly transfer of resources to other productive pursuits.

(B) A domestic industry may be considered to have made a positive adjustment even though the industry is not of the same size and composition as the industry was at the time the petition was filed under section 201(a).

(3)(A) Any actions described in clause (i), (ii), or (iii) of section 204(d)(1)(A) may be recommended under paragraph (1)(A) only to the extent the cumulative impact of such actions does not exceed the amount necessary to prevent or remedy the serious injury, or threat of serious injury, caused by increased imports of the article under investigation.

(B) The duration of the period for which actions are recommended under paragraph (1)(A) to be taken under section 204 shall not exceed 10 years.

(C) No recommendation may be made under paragraph (1)(A) which would increase a rate of duty to (or imposes) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time the recommendation is made.

(D) Any quantitative restriction recommended under paragraph (1)(A) shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article.

(E) To the extent feasible, any recommendation made under paragraph (1)(A) to take actions described in section 204(d)(1)(A) for a period of more than 3 years shall provide for a phasing down of such actions during the period in which such actions are taken, with the first reduction taking effect no later than the close of the day which is 3 years after the day on which such actions first take effect.

(F) In determining whether to recommend under paragraph (1)(A) any action described in section 204(d)(1)(B), the Commission shall take into account the likelihood that the objective of the actions described in section 204(d)(1)(B) can be attained.

(G)(i) For purposes of this paragraph—

(I) the suspension of item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article, or

(II) the suspension of the designation of any article as an eligible article for purposes of title V,

shall be treated as an increase in duty.

(ii) A recommendation may be made under paragraph (1)(A) that provides for the suspension referred to in clause (i)(I) with respect to any article only if the Commission, in addition to making an affirmative determination with respect to such article under section 201(b)(1), determines in the course of its investigation that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the application of item 806.30 or item 807.00 of such Schedules.

(iii) A recommendation may be made under paragraph (1)(A) that provides solely for a suspension referred to in clause (i)(II) with respect to any article only if the Commission, in addition to making an affirmative determination with respect to such article under section 201(b)(1), determines in the course of its investigation that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the designation of the article as an eligible article for the purposes of title V.

(4) If the Commission has made an affirmative determination under section 201(b)(1), the Commission shall—

(A) after reasonable notice, hold a public hearing on the recommendations the Commission is required to make under paragraph (1)(A) at which all interested parties shall be provided an opportunity to present testimony and evidence,

(B) take into account in making the recommendations under paragraph (1)(A)—

(i) the objectives and actions, including the nature and extent of import relief, specified in the adjustment plan submitted under section 201(a)(1)(B), and

(ii) any confidential commitments obtained under section 201(c)(2).

(5) Only those members of the Commission who agreed to the affirmative determination made under section 201(b)(1) shall be eligible to vote on the recommendations and determination that the Commission is required to make under paragraph (1) with respect to such affirmative determination.

(c) The Commission shall transmit the adjustment plan submitted to the Commission under section 201(a)(1)(B), and any confidential commitments made under section 201(c)(2), to the President with the report that is submitted under subsection (a).

(d) The report of the Commission required under subsection (a) shall be submitted to the President at the earliest practicable time, but not later than the date that is 180 days after the date on which the petition is filed under section 201(a) (or the date on which the request or resolution is received, or the motion is adopted, under section 201(b)(1), as the case may be). Upon making such report to the President, the Commission shall promptly make such report public (with the exception of information which the Commission determines to be confidential) and shall publish a summary of such report in the Federal Register.

(e) The President may request additional information from the Commission within 15 days after the date on which the President receives a report on an affirmative determination of the Commission made under section 201(b)(1). The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives such a request, furnish the President additional information with respect to such industry in a supplemental report.

SEC. 204. ACTION BY THE PRESIDENT IN RESPONSE TO INVESTIGATION.

(a)(1) If the Commission makes an affirmative determination under section 201(b)(1), the President, by proclamation or Executive order issued before the date that is 60 days (75 days if a request for additional information is made under section 203(e)) after the date on which the report on such determination is submitted to the President under section 203(a)—

(A) shall take—

(i) the actions recommended by the Commission under section 203(b)(1)(A), or

(ii) other actions authorized under subsection (d)(1) which are substantially equivalent to the actions recommended by the Commission under section 203(b)(1)(A), and

(B) may take any other actions authorized under subsection (d)(1)(B) that are likely to assist the domestic industry in making a positive adjustment to import competition.

(2) The President shall not be required to take any action under paragraph (1) which the President determines—

(A) would endanger the national security of the United States, or

(B) would be a substantial cause of serious injury to any domestic industry that consumes any product of the domestic industry that is the subject of the determination made under section 201(b)(1).

(3) If the Commission makes an affirmative determination under section 201(b)(1) and the Commission recommends under section 203(b)(1)(A) the provision of trade adjustment assistance to workers or firms in the domestic industry that is the subject of such determination, the President shall, by proclamation or Executive order issued before the date that is 30 days after the date on which the report on such determination is submitted to the President under section 203(a), direct the Secretary of Labor or the Secretary of Commerce to certify such workers or firms as eligible for trade adjustment assistance under chapter 2 or 3, notwithstanding any provision of such chapters.

(b) If—

(1) the President reports under subsection (c)(2) that—

(A) the President has determined to take actions under subsection (a)(1) which differ from, and are not substantially equivalent to, the actions recommended by the Commission under section 203(b)(1)(A), or

(B) the President will not take any actions under subsection (a)(1), and

(2) a joint resolution of disapproval described in section 152(a)(1)(A) is enacted into law within the 90-day period beginning on the date on which the document referred to in subsection (c)(2) is submitted to the Congress,

the President shall, by proclamation or Executive order issued before the date that is 30 days after the date of enactment of such joint resolution, take the actions which were recommended by the Commission under section 203(b)(1)(A) and the President may rescind any portion of the proclamation or Executive order issued under subsection (a)(1) that implemented the actions the President had determined to take.

(c)(1) In determining what actions described in subsection (d)(1)(A), that are substantially equivalent to the recommendations made under section 203(b)(1)(A), should be taken under subsection (a), what actions described in subsection (d)(1)(B) should be taken under subsection (a), and the method and duration of such actions, the President shall—

(A) consult with the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962, and consider the recommendations of such organization with regard to such determination, and

(B) take into account, in addition to such other considerations as he may consider relevant—

(i) the adjustment plan, and any confidential commitments, transmitted with the report that is submitted under section 203(a);

(ii) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

(iii) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 3;

(iv) the probable effectiveness of actions as a means of promoting a positive adjustment;

(v) the efforts being made, or to be implemented, by the domestic industry (including any confidential commitments and any actions specified in the adjustment plan that have been transmitted with the report submitted under section 203(a)) to make a positive adjustment to imports, and other considerations relative to the position of the industry in the United States economy;

(vi) the effect of action on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

(vii) the efforts of firms in the domestic industry to provide retraining to workers in the industry; and

(viii) the potential for circumvention of such actions.

(2) By no later than the date that is 60 days (75 days if a request for additional information is submitted under section 203(e)) after the date on which the report is submitted to the President under section 203(a), the President shall submit to the Congress a document which sets forth—

(A) the actions the President has determined to take under subsection (a),

(B) if such actions differ from, but are substantially equivalent to, the actions recommended by the Commission in such report, the reasons for such difference,

(C) if the President has determined to take no action under subsection (a), the basis on which such determination was made and the reasons supporting an exemption under subsection (a)(2) from taking actions under subsection (a), and

(D) any recommendations for legislation which would assist the domestic industry in making a positive adjustment to imports.

(d)(1)(A) The President is authorized to take the following actions under this subsection:

(i) to proclaim any increase in, or imposition of, any duty on the article which is the subject of the affirmative determination made under section 201(b)(1);

(ii) to proclaim a tariff-rate quota on such article;

(iii) to proclaim a modification of, or an imposition of, any quantitative restriction on the importation into the United States of such article;

(iv) to negotiate, conclude, and carry out orderly marketing agreements with foreign countries limiting the export of such article from foreign countries and the importation into the United States of such article; or

(v) to take any combination of the actions described in the preceding clauses.

(B) In addition to the actions described in subparagraph (A), the President is authorized to take the following actions under this section:

(i) to direct the Secretary of Labor and the Secretary of Commerce to certify as eligible for trade adjustment assistance under chapter 2 or 3 workers and firms in the domestic industry producing articles like, or directly competitive with, the article that is the subject of the affirmative determination made under section 201(b)(1);

(ii) to direct the Attorney General of the United States to review, in consultation with the Secretary of Commerce, applications from firms in such domestic industry for anti-trust law exemptions granted under paragraph (2);

(iii) to direct the head of any department or agency of the Executive Branch to review applications under paragraph (3) from firms in such domestic industry for alteration, easing, or elimination of any Federal regulatory requirement imposed by statute or by regulations;

(iv) to initiate multilateral negotiations to address conditions susceptible to multilateral approaches, such as global oversupply, diversion, or imports due to government targeting; or

(v) to take any combination of the actions described in the preceding clauses.

(2)(A) Any firm that is part of the domestic industry with respect to which an affirmative determination has been made under section 201(b)(1), may submit to the Attorney General of the United States an application for exemption from section 7 of the Clayton Act (15 U.S.C. 18), section 2 of the Sherman Act (15 U.S.C. 2), and section 1 of the Sherman Act (15 U.S.C. 1) insofar as it applies to mergers and acquisitions, if the President issues under this section a directive described in paragraph (1)(B)(ii) in response to such determination.

(B) If directed by the President under subsection (a) to consider applications submitted under subparagraph (A), the Attorney General, in consultation with the Secretary of Commerce, shall grant the exemption sought upon determination that—

(i) the applicants are members of the industry determined by the Commission under section 201(b)(1) to have been seriously injured, or to be threatened with serious injury,

(ii) the action for which exemption is sought is reasonably related to enhancing competition with foreign competitors to whom market share has been lost, and, considering worldwide competition, outweighs any adverse competitive impact on the domestic market, and

(iii) the specified action would not violate provisions of the antitrust laws for which exemption cannot be requested.

(C) The Attorney General of the United States shall report any exemption allowed under this section to the Judiciary Committee and the Ways and Means Committee of the House of Representatives and the Judiciary Committee and the Finance Committee of the Senate.

(3)(A) Any firm that is part of the domestic industry with respect to which an affirmative determination has been made under section 201(b)(1), may submit to the head of any department or agency of the Executive Branch to whom the President has issued under this section a directive described in paragraph (1)(B)(iii) in response to such affirmative determination an application for alteration, easing, or elimination of any Federal regulatory requirement imposed by statute or by regulations.

(B) If directed by the President under subsection (a) to consider applications submitted under subparagraph (A), the head of the department or agency shall—

(i) conduct an expedited review of the Federal regulatory requirements that are the subject of any application submitted under subparagraph (A), and

(ii) on the basis of such review, make a determination of whether—

(I) the applicants are members of the industry determined by the Commission under section 201(b)(1) to have been seriously injured, or to be threatened with serious injury,

(II) action to alter, ease, or eliminate such Federal regulatory requirements is reasonably related to enhancing competition with foreign competitors to whom market share has been lost, and, considering worldwide competition, outweighs any adverse impact from such action.

(C) If the determinations made by the head of the department or agency under subclauses (I) and (II) of subparagraph (B)(ii) are both affirmative, the head of the department or agency shall—

(i) take any appropriate action that—

(I) is the subject of the affirmative determination made under subparagraph (B)(ii)(II), and

(II) is within the scope of the authority of the head of the department or agency,

(ii) recommend that the President take any appropriate action that—

(I) is the subject of the affirmative determination made under subparagraph (B)(ii)(II), and

(II) is not within the scope of the authority of the head of the department or agency, but is within the scope of the authority of the President or of any other head of a department or agency of the Executive Branch, and

(iii) recommend to the Congress that legislation be enacted to effect any action that—

(I) is the subject of the affirmative determination made under subparagraph (B)(ii)(II), and

(II) is not within the scope of the authority of the President or of any head of a department or agency of the Executive Branch.

(D) The head of the department or agency shall submit to the Congress notice of any actions taken by the head of the department or agency under subparagraph (C).

(E) Information and documentary material filed with respect to applications submitted under this paragraph, and actions taken under this paragraph, shall be exempt from disclosure under section 552 of title 5 of the United States Code, and no such information or documentary material may be made public except as may be relevant to any administrative or judicial proceeding. Nothing in this paragraph is intended to prevent disclosure to the Congress or to any committee or subcommittee of the Congress.

(e)(1) Any actions taken under this section shall be subject to the same requirements applicable under section 203(b)(3) to recommendations of the Commission made under section 203(b)(1)(A).

(2) Any orderly marketing agreement described in subsection (d)(1)(A)(iv) that is negotiated under this section shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period which the President determines is representative of imports of such article.

(f)(1) Actions that the President proclaims or orders under subsection (a) shall take effect on or before the close of the period within which such proclamation or order is required to be issued under this section.

(2) If the President, before the date on which action would otherwise be required to take effect under this subsection, publishes in the Federal Register notice of the intention of the President to negotiate an orderly marketing agreement described in subsection (d)(1)(A)(iv) or to enter into multilateral negotiations described in subsection (d)(1)(B)(iv), no action shall be required to take effect under this subsection until the day that is 75 days after such date.

SEC. 205. ADMINISTRATION, REVIEW, AND TERMINATION OF ACTIONS TAKEN BY THE PRESIDENT.

(a)(1) Notwithstanding subsection (c)(3), the President is authorized to take such additional actions under section 204 as may be necessary to eliminate any circumvention of any other actions previously taken under section 204.

(2) The President shall by regulations provide for the efficient and fair administration of any action or import restriction proclaimed or ordered under section 204.

(3) In order to carry out any agreement described in section 204(d)(1)(A)(iv), the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out such an agreement concluded with one or more countries accounting for a major part of United States imports of the article covered by such agreement, including imports into a major geographic area of the United States, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(4) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administra-

tion, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(b)(1) So long as any action described in section 204(d)(1) is taken under section 204 to assist a domestic industry, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by the firms in the domestic industry to make a positive adjustment to import competition.

(2) On a date determined by the President that is at least 3 years after the date on which action is taken under section 204 to assist a domestic industry (and thereafter as directed by the President, but not more frequently than once every 3 years, for so long as such action continues to be taken), the Commission shall submit to the President a report on the monitoring of the domestic industry that has been conducted under paragraph (1).

(3) In the course of preparing a report under paragraph (2), the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(c)(1) The duration of the period in which actions are taken under section 204 to assist a domestic industry shall not exceed 10 years.

(2)(A) If the action taken under section 204 provides import relief described in clause (i), (ii), or (iii) of section 204(d)(1)(A), the President may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, such import relief.

(B) If the President negotiates under section 204 an orderly marketing agreement described in section 204(d)(1)(A)(iv) and such agreement is not effective, the President may, consistent with the limitations contained in this section, take additional action under section 204.

(3) Actions taken under section 204 may be reduced, modified (but not increased), or terminated by the President if—

(A) the President determines, after taking into account the report submitted by the Commission under subsection (b) and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, that the domestic industry for which such actions are being taken has not made an adequate effort to make a positive adjustment to import competition, or

(B) a majority of the representatives of the domestic industry submit to the President a petition requesting such reduction, modification (but not increase), or termination on the basis that the domestic industry has made a positive adjustment to import competition.

(d)(1) After actions taken under section 204 have terminated, the Commission shall evaluate the effectiveness of the actions.

(2) During the course of the evaluation conducted under paragraph (1), the Commission shall, after reasonable public notice, hold a hearing on the effectiveness of the actions taken under section 204. All interested persons shall have the opportunity to attend such hearing and to present evidence or testimony at such hearing.

(3) A report on the evaluation made under paragraph (1) and the hearings held under paragraph (2) shall be submitted by the Com-

mission to the President and to the Congress by no later than the date which is 6 months after the date on which the actions taken under section 204 terminated.

* * * * * * *

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

Subchapter A—Petitions and Determinations

* * * * * * *

[SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

[The Secretary shall certify a group of workers as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

[(1) that a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

[(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

[(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.]

SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

(1) a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated,

(2) sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) increases of imports of articles like or directly competitive with articles—

(A) which are produced by such workers' firm or appropriate subdivision thereof, or

(B) [in the case of workers of a firm in the oil or natural gas industry,] for which such workers' firm, or appropriate subdivision thereof, provides essential goods or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(b) For purposes of subsection (a)(3)—

(1) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(2) Natural gas shall be considered to be competitive with crude oil and refined petroleum products.

(3) Any firm, or subdivision of a firm, which—

(A) engages in the exploration for oil or natural gas,

(B) produces or extracts oil or natural gas, or

(C) processes or refines oil or natural gas,

shall be considered to be a part of the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.

(4) Any firm which provides essential goods, or essential services, to another firm that conducts activities described in paragraph (3) with respect to oil or natural gas, as its principal trade or business, shall be considered to be a part of the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.

SEC. 224. STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION; ACTION WHERE THERE IS AFFIRMATIVE FINDING.

* * * * * * *

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section [201] *203a*. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

* * * * * * *

SEC. 225. BENEFIT INFORMATION TO WORKERS.

[The Secretary] *(a) The Secretary* shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A of this chapter—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A in newspapers of general circulation in the areas in which such workers reside.

* * * * * * *

SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.

(a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition that resulted in such certification was filed under section 221, if the following conditions are met:

* * * * * * *

[(5) Such worker, unless the Secretary has determined that no acceptable job search program is reasonably available—

[(A) is enrolled in a job search program approved by the Secretary under section 2297(c) of this title, or

[(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a job search program approved by the Secretary under section 2297(c) of this title.]

(5) Such worker—

(A) is enrolled in a training program approved by the Secretary under section 236(a),

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

(C) has received a written statement certified under subsection (c) after the date described in subparagraph (B).

[(b) If the Secretary determines with respect to any labor market area that—

[(1) a high level of unemployment exists,

[(2) suitable employment opportunities are not available, and

[(3) there are facilities available for the provision of training under section 236 in new or related job classifications,

the Secretary may, in accordance with such regulations as he shall prescribe, require all adversely affected workers who were totally or partially separated in such area and for whom such training is approved under section 236—

[(A) to accept such training, or

[(B) to search actively for work outside such area,

whichever the worker may choose; except that no worker may be required (i) to accept training or undertake a job search under this subsection until after the first 8 weeks of his eligibility for trade readjustment allowances has expired or (ii) to accept, or to participate in, such training for a period longer than the remaining period to which he is entitled to such allowances. For purposes of this subsection, the term 'labor market area' has the same meaning as is given such term in the Introduction to the Directory of Important Labor Areas, 1980 edition, published by the Department of Labor; except that for any portion of any State which is not included within that term in such introduction, the county or counties in which that portion is located shall be treated as the applicable labor market area.]

(b) If the Secretary determines that—

(1) the adversely affected worker—

(A) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

(B) has ceased to participate in such training program before completing such training program, and

(2) there is no justifiable cause for such failure or cessation, no trade adjustment allowance may be paid to the adversely affected worker under this part on or after the date of such determination until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).

[(c) If the Secretary determines that—

[(1) the adversely affected worker—

[(A) has failed to begin participation in the job search program the enrollment in which meets the requirement of subsection (a)(5) of this section, or

[(B) has ceased to participate in such job search program before completing such job search program, and

[(2) there is no justifiable cause for such failure or cessation, no trade readjustment allowance may be paid to the adversely affected worker under this part on or after the date of such determination until the adversely affected worker begins or resumes participation in a job search program approved under section 2297(c) of this title.]

(c)(1) If the Secretary finds that it is not feasible or appropriate to approve a training program for a worker under section 236(a), the Secretary shall submit to such worker a written statement certifying such finding.

(2) If a State or State agency has entered into an agreement with the Secretary under section 239 and the State or State agency finds that it is not feasible or appropriate to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall—

(A) submit to such worker a written statement certifying such finding, and

(B) submit to the Secretary a written statement certifying such finding and the reasons for such finding.

(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of workers who received certifications under this subsection during the preceding year.

SEC. 232. WEEKLY AMOUNTS.

* * * * * * *

(c) If a training allowance under any Federal law other than this chapter, is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification [under section 231(c) or 236(c)] *under section 231(b)* of this act) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 2293(a) of this act when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

* * * * * * *

SEC. 233. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.

(a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of [52] *78* multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

* * * * * * *

[(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

[(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

[(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is engaged in such training and has not been determined under section 236(c) of this act to be failing to make satisfactory progress in the training.]

(3) If the adversely affected worker has received a written statement certified under section 231(c) after the date the worker became totally separated, or partially separated, from adversely affected employment, paragraph (1) shall be applied with respect to such worker by substituting "52" for "78".

[(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).]

[(e)] *(b)* No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.

* * * * * * *

SEC. 235. EMPLOYMENT SERVICES.

The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with [cooperating State agencies] *the States.*

* * * * * * *

SEC. 236. TRAINING.

(a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for a worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary [is available] *is reasonably available* to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers), and

(E) the worker is qualified to undertake and complete such training,

the Secretary shall [(to the extent appropriated funds are available] approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training *(subject to the limitations imposed by this section)* paid on his behalf by the Secretary *directly or through a voucher system.* Insofar as possible, the secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2)(A) The aggregate amount of payments that may be made under paragraph (1) for any adversely affected worker shall not exceed $4,000 for each certification made under subchapter A.

(B) The Secretary may issue more than one voucher under paragraph (1) to a worker with respect to any partial separation or total separation, but the aggregate value of such vouchers shall not exceed the amount of the limitation imposed by subparagraph (A) with respect to such separation.

[(2)] *(3)* For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

[(3)] *(4)*(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(D) Nothing in this paragraph, or in any other provision of this section, may be construed to restrict—

(i) the authority of the Secretary to approve any training program under paragraph (1) that costs more than the limitation imposed under paragraph (2), or

(ii) the use of funds which are provided—

(I) under any provision of Federal law other than this section, or

(II) from any source other than this section,

to pay the costs of such a training program that exceed the limitation imposed under paragraph (2).

[(4)] *(5)* The training programs that may be approved under paragraph (1) include but are not limited to—

(A) on-the-job training,

(B) any training program provided by a State pursuant to section 1653 of Title 29,

(C) any training program approved by a private industry council established under section 1512 of Title 29, and

(D) any other training program approved by the Secretary.

[*(5)*] *(6) For purposes of making determinations of whether to approve training programs under paragraph (1), the Secretary may not establish an absolute limitation on the length of training or on the period of time over which all training programs are to be completed, but the Secretary shall consider, on a program-by-program basis, whether the training provided under each program is of suitable duration to achieve the desired skill level within a reasonable period of time.*

[*(6)(A) If—*

[*(i) the Secretary would otherwise deny approval of a training program solely on the basis that the total costs of such training program exceed a limitation imposed by the Secretary for the purpose of ensuring that the costs of training paid under this section do not exceed the amount of funds appropriated to carry out this section, and* [*(ii) the adversely affected worker enters into an agreement with the Secretary under which the worker agrees that the portion of the costs of such training program that exceed the limitation described in clause (i) will be paid from—*

[*(I) funds available to the worker under any other Federal program, or*

[*(II) any source other than this section,*

the Secretary shall approve such training program.

[*(B) Nothing in paragraph (3), or in any other provision of this section, may be construed to restrict the use of funds provided under any Federal program, or from any source other than this section, to pay any portion of the costs of a training program approved under this section that exceed the limitation described in subparagraph (A)(i).*]

(7) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subchapter (A) at any time after the date on which the group is certified under subchapter A, without regard to whether such worker—

(A) has exhausted all rights to any unemployment insurance to which the worker is entitled, or

(B) is being paid, or has been paid, a trade readjustment allowance under this chapter at the time the training is approved.

* * * * * * *

[(c) Any adversely affected worker who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, suitable training to which he has been referred by the Secretary shall not thereafter be entitled to payments under this chapter until he enters or resumes the training to which he has been so referred.]

[(d)] *(c)* Notwithstanding any provision of subsection (a)(1) of this section, the Secretary may pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1) of this section only if—

* * * * * * *

[(e)] *(d)* A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subpart because the individual is in training approved under subsection (a) of this section, because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under subsection (a) of this section and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

[(f)] *(e)* For purposes of this section the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

[(g)] *(f) For purposes of this chapter, a worker shall be treated as participating in training during any week which is part of a 2-week break in training if—*

(1) the worker was participating in a training program approved under subsection (a) before the beginning of such break in training, and

(2) either—

(A) the break is provided under such training program, or

(B) the worker provides such assurances as the Secretary may require that the worker will, at the close of the break, be participating in another training program approved under subsection (a).

*   *   *   *   *   *   *

SEC. 239. AGREEMENTS WITH STATES.

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subpart as "cooperating States" and "cooperating States agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will reveive applications for, and will provide, payments on the basis provided in this part, (2) where appropriate, but in accordance with subsection (f) of this section, will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, [(3) will make determinations and approvals regarding job search programs under sections 231(c) and 237(c) of this title,] *(3) will make any certifications required under section 231(c)(2), and* (4) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this part.

*   *   *   *   *   *   *

[(e) Agreements entered into under this section may be made with one or more State or local agencies including—

[(1) the employment service agency of such State,

[(2) any State agency carrying out title III of the Job Training Partnership Act, or

[(3) any other State or local agency administering job training or related programs.]

(e) Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of this Act and under title III of the Job Training Partnership Act upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this chapter.

[(f) Each cooperating State agency shall, in carrying out subsection (a)(2) of this section—

[(1) advise each adversely affected worker to apply for training under section 2296(a) of this title at the time the worker makes application for trade readjustment allowances (but failure of the worker to do so may not be treated as cause for denial of those allowances), and

[(2) within 60 days after application for training is made by the worker, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 2296 of this section and review such opportunities with the worker.]

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) advise each adversely affected worker to apply for training under section 236(a) before, or at the same time, the worker applies for trade readjustment allowances under subchapter B, and

(2) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.

* * * * * * *

SEC. 245. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1986, 1987, 1989, [1990 and 1991] *and 1990,* such sums as may be necessary to carry out the purposes of this part.

* * * * * * *

SEC. 247. DEFINITIONS.

For purposes of this chapter—

* * * * * * *

(6) The term "partial separation" means, with respect to an individual who has not been totally separated, [that he] *the most recent incident in which the individual* has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

* * * * * * *

(11) The term "total separation" means the *most recent* most recent layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

* * * * * * *

SEC. 251. PETITIONS AND DETERMINATIONS.

* * * * * * *

[(c) The Secretary shall certify a firm as eligible to apply for adjustment assistance under this chapter if he determines—

[(1) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

[(2) that sales or production, or both, of such firm have decreased absolutely, and

[(3) that increases of imports of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.]

(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

(A) a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

(B) sales or production, or both, of such firm have decreased absolutely, and

(C) increases of imports of articles like or directly competitive with articles—

(i) which are produced by such firm, or

(ii) [in the case of a firm in the oil or natural gas industry,] for which such firm provides essential goods or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(2) For purposes of paragraph (1)(C)—

(A) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(B) Natural gas shall be considered to be competitive with crude oil and refined petroleum products.

(C) Any firm which—

(i) engages in the exploration for oil or natural gas,

(ii) produces or extracts oil or natural gas,

(iii) processes or refines oil or natural gas, or

(iv) provides essential goods, or essential services, to another firm that conducts activities described in any of the preceding clauses as its principal trade or business,

shall be considered to be in the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.

* * * * * * *

SEC. 256. DELEGATION OF FUNCTIONS TO SMALL BUSINESS ADMINISTRATION; AUTHORIZATION OF APPROPRIATIONS.

(b) There are hereby authorized to be appropriated to the Secretary for fiscal years 1986, 1987, 1988, 1989, [1990, and 1991] *and 1990* such sums as may be necessary to carry out his functions under this part in connection with furnishing adjustment assistance to firms (including, but not limited to, the payment of principal, interest, and reasonable costs incident to default on loans guaranteed by the Secretary under the authority of this part), which sums are authorized to be appropriated to remain available until expended.

* * * * * * *

SEC. 264. STUDY BY SECRETARY OF COMMERCE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION; ACTION WHERE THERE IS AFFIRMATIVE FINDING.

* * * * * * *

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section [201] *203a*. Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

* * * * * * *

SEC. 285. PETITIONS.

* * * * * * *

[(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) of this section a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.]

(b) No assistance, vouchers, allowances, or other payments may be provided under chapter 2, no technical assistance may be provided under chapter 3, and no duty shall be imposed under section 287, after September 30, 1993.

* * * * * * *

SEC. 286. TRADE COMPETITIVENESS ASSISTANCE TRUST FUND.

(a) There is hereby established within the Treasury of the United States a trust fund to be known as the Trade Competitiveness Assistance Trust Fund (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be transferred or credited to the Trust Fund as provided in this section or appropriated to the Trust Fund under subsection (e).

(b)(1) The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty imposed by section 287.

(2) The amounts which are required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

(c)(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted and on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2)(A) The Secretary of the Treasury shall invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d)(1) The Secretary of the Treasury shall pay out of the Trust Fund amounts necessary for—

(A) the payment of drawbacks and refunds of the duty imposed by section 287 that are allowable under any other provision of Federal law,

(B) expenditures that are required to carry out the provisions of chapters 2 and 3, and

(C) payments required under subsection (e)(2).

(2) None of the amounts in the Trust Fund shall be available for the payment of loans guaranteed under chapter 3 or for any other expenses relating to financial assistance provided under chapter 3.

(3) If the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, determine that the amount of funds necessary to make expenditures required to carry out chapters 2 and 3 for the fiscal year will exceed an amount equal to 1 percent of the total value of all articles upon which the Secretary of the Treasury estimates a duty will be imposed by section 287 during such fiscal year, the Secretary of Labor and the Secretary of Commerce shall, notwithstanding any provision of chapter 2 or 3, make a pro rata reduction in the assistance provided under chapters 2 and 3 to ensure that all workers and firms eligible for assistance under chapter 2 or 3 receive some assistance under chapter 2 or 3 and that the expenditures made in providing such assistance do not exceed the amount of funds available in the Trust Fund to pay for such expenditures.

(e)(1)(A) There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d)(1)(B).

(B) Any advance appropriated to the Trust Fund under the authority of subparagraph (A) may be paid to the Trust Fund only to

the extent that the total amount of advances paid during the fiscal year to the Trust Fund from any appropriation authorized under subparagraph (A) that are outstanding after such advance is paid to the Trust Fund does not exceed the lesser of—

(i) the excess of—

(I) the total amount of funds that the Secretary of the Treasury (in consultation with the Secretary of Labor and the Secretary of Commerce) estimates will be necessary for the payments and expenditures described in subparagraphs (A) and (B) of subsection (d)(1) for such fiscal year, over

(II) the total amount of funds that the Secretary of the Treasury estimates will be available in the Trust Fund during the fiscal year (determined without regard to any advances made under this subsection during such fiscal year), or

(ii) the excess of—

(I) an amount equal to 1 percent of the total value of all articles upon which the Secretary of the Treasury estimates a duty will be imposed by section 287 during such fiscal year, over

(II) the amount described in clause (i)(II).

(2) Advances made to the Trust Fund from appropriations authorized under paragraph (1)(A) shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury of the United States when the Secretary of the Treasury determines that sufficient funds are available in the Trust Fund for such purposes.

(3) Interest on advances made from appropriations authorized under paragraph (1)(A) shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding.

SEC. 287. IMPOSITION OF ADDITIONAL FEE.

(a) In addition to any other fee imposed by law, there is hereby imposed a fee on all articles entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(b)(1) The rate of the fee imposed by subsection (a) shall be a uniform ad valorem rate proclaimed by the President that is equal to the lesser of—

(A) 1 percent, or

(B) the percentage that is sufficient to provide the funding necessary to—

(i) carry out the provisions of chapters 2 and 3, and

(ii) repay any advances made under section 286(e).

(2) Whenever necessary, the President shall issue proclamations adjusting the rate of the fee imposed by subsection (a) to the ad valorem rate that meets the requirements of paragraph (1).

(3) Any rate of the fee imposed by subsection (a) that is proclaimed by the President under this subsection shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date that is 30 days after the date on which the proclamation establishing such rate is issued.

(c)(1) Except as otherwise provided in this subsection, dute-free treatment provided with respect to any article under any other provision of law shall not prevent the imposition of a fee with respect to such article by subsection (a).

(2) No fee shall be imposed by subsection (a) with respect to—

(A) any article (other than an article provided for in item 870.40, 870.45, 870.50, 870.55, or 870.60 of the Tariff Schedules of the United States) that is treated as duty-free under schedule 8 of the Tariff Schedules of the United States, or

(B) any article which has a value of less than $1,000.

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

(a) DETERMINATIONS REQUIRING ACTION.—

(1) IN GENERAL.—If the President determines that action by the United States is appropriate—

(A) to enforce the rights of the United States under any trade agreement; or

(B) to respond to any act, policy, or practice of a foreign country [or instrumentality] that—

(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts *(or threatens to burden or restrict)* United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice.

(2) SCOPE OF ACTION.—The President may exercise his authority under this section *or section 304(b)(1)* with respect to any goods or sector—

(A) on a nondiscriminatory basis or solely against the foreign country [or instrumentality] involved, and

(B) without regard to whether or not such goods or sector were involved in the act, policy, or practice identified under paragraph (1).

[(b) OTHER ACTION.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—

[(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved;

[(2) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.]

(b) OTHER ACTION.—

(1) IN GENERAL.—Upon making a determination described in subsection (a), or upon the application of section 304(b)(1), the President, in addition to taking action referred to in subsection (a), may—

(A) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement con-

cessions to carry out a trade agreement with the foreign country involved,

(B) impose duties or other import restrictions on the products of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the President determines appropriate, and

(C) withdraw, or refrain from proclaiming under title V—

(i) the designation of such foreign country as a beneficiary developing country, or

(ii) the designation of any product of such foreign country as an eligible article.

(2) AGREEMENTS.—In addition to the actions authorized under paragraph (1), upon making a determination described in subsection (a), the President may enter into binding agreements with a foreign country that fully offset or eliminate any burden or restriction on United States commerce resulting from the acts, policies, or practices of the foreign country described in subsection (a)(1)(B).

(c) ADDITIONAL ACTIONS ON SERVICES.—

(1) IN GENERAL.—Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in subsection (b), the President may—

(A) restrict, in the manner and to the extent the President deems appropriate, the terms and conditions of any such authorization, or

(B) deny the issuance of any such authorization.

(2) AFFECTED AUTHORIZATIONS.—Actions under paragraph (1) shall apply only with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(A) a petition is filed under section 302(a), or

(B) a determination to initiate an investigation is made by the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative", under section 302(c).

(3) CONSULTATION.—Before the President takes action [under subsection (b) or (c)] *under subsection (a) or section 304(b)(1)* involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(d) PRESIDENTIAL PROCEDURES.—

[(1) ACTION ON OWN MOTION.—]If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expenditures action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

[(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives the recommendation of the Trade Representative under section 304 with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.]

(e) DEFINITIONS; SPECIAL RULE FOR VESSEL CONSTRUCTION SUBSIDIES.—For [purposes of this section] *purpose of this chapter*—

(1) COMMERCE.—The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) VESSEL CONSTRUCTION SUBSIDIES.—An Act, policy, or practice of a foreign country [or instrumentality] that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country [or instrumentality] of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

[(3) UNREASONABLE.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable—

[(A) market opportunities;

[(B) opportunities for the establishment of an enterprise; or

[(C) provision of adequate and effective protection of intellectual property rights.]

(3) UNREASONABLE.—

(A) IN GENERAL.—An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) INCLUSIONS.—Acts, policies, and practices that are unreasonable include, but are not limited to, acts, policies, and practices (or any combination thereof) which—

(i) deny fair and equitable—

(I) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by private firms or among private firms in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods and services to purchasing by such firms,

(II) opportunities for the establishment of an enterprise, or

(III) provision of adequate and effective protection of intellectual property rights,

(ii) constitute export targeting,

(iii) constitute a requirement of a foreign country that—

(I) intellectual property be licensed to such foreign country or to any firm of such foreign country, or

(II) technical information regarding any product or service be submitted to such foreign country,

as a condition for the importation into such foreign country of any product or service of the United States or for the marketing or sale in such foreign country of any product or service of the United States, or

(iv) constitute a persistent pattern of conduct that—

(I) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

(C) ADVANCEMENT OF WORKERS RIGHTS.—

(i) IN GENERAL.—Acts, policies, and practices of a foreign country described in subparagraph (B)(iv) shall not be treated as being unreasonable if the Trade Representative determines that—

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and measurable overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iv), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) PUBLICATION.—The Trade Representative shall publish in the Federal Register any determination made under clause (i) in the course of any investigation conducted under this chapter, together with a description of the facts on which such determination is based.

(D) RECIPROCAL OPPORTUNITIES.—For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(E) EXPORT TARGETING.—

(i) IN GENERAL.—The term 'export targeting' means any government plan or scheme consisting of a combination of coordinated actions (whether carried out sev-

erally or jointly) that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(ii) Inclusions.—The term "export targeting" includes, but is not limited to—

(I) protection of the home market;

(II) promotion or tolerance of cartels;

(III) special restrictions on technology transfer imposed for reasons of commercial advantage;

(IV) discriminatory government procurement or other actions that limit foreign competition in a specific sector or of a specific industry and thereby promote export competitiveness of domestic firms;

(V) the use of export performance requirements that limit foreign competition in a specific sector or of a specific industry and thereby promote export competitiveness; or

(VI) subsidization (as defined in the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, relating to subsidies and countervailing measures).

(4) Unjustifiable.—

(A) In general.—The term "unjustifiable" means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Certain actions included.—The term "unjustifiable" includes, but is not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment, the right of establishment, or protection of intellectual property rights.

[(5) Definition of discriminatory.—The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment.]

(5) Discriminatory.—

(A) In general.—Acts, policies, and practices that are discriminatory include, but are not limited to, any act, policy, or practice—

(i) which denies national or most-favored-nation treatment to United States goods, services, or investments,

(ii) which enables a state trading enterprise to—

(I) complete in international trade with United States firms, or

(II) makes purchases or sales in international trade,

on any basis that is not dependent on commercial considerations (including price, quality, availability, marketability, and transportation), *(iii) through which a foreign country exercises its authority, influence, or power for the purpose of assisting a state trading enterprise in—*

(I) competing in international trade with United States firms, or

(II) making purchases or sales in international trade,

on any basis that is not dependent on commercial considerations (including price, quantity, availability, marketability, and transportation), or

(iv) which fails to afford United States firms adequate opportunity, in accordance with customary business practice, to compete for participation in purchases from, or sales to, state trading enterprises.

(B) COMMERCIAL CONSIDERATIONS.—The determination of whether purchases and sales have been based on commercial considerations shall be made on the basis of similar arm's-length commercial purchases and sales by any person or entity that is not a state trading enterprise.

(C) STATE TRADING ENTERPRISE.—The term "state trading enterprise" means—

(i) any agency, instrumentality, or administrative unit of a foreign country which—

(I) purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or

(II) sells goods or services in international trade, or

(ii) any business firm—

(I) which is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit of a foreign country,

(II) which is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit, and

(III) which purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods or services in international trade.

(6) SERVICE SECTOR ACCESS AUTHORIZATION.—The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services, *or a foreign supplier of goods related to a service,*" access to the United States market in a service sector concerned.

(7) BURDEN ON UNITED STATES COMMERCE.—Acts, policies, and practices of a foreign country which burden United States commerce include, but are not limited to—

(A) acts, policies, and practices which have an adverse effect on trade between the United States and another foreign country.

(B) the subsidization of exports of such foreign country that results in the displacement of United States exports to another foreign country,

(C) the imposition of import restrictions or export performance requirements that result in the diversion of the exports of another foreign country to United States markets, and

(D) the enforcement of trade restraining agreements that result in the diversion of the exports of another foreign country to United States markets.

(8) FOREIGN INSTRUMENTALITIES AND TERRITORIES.—Any foreign instrumentality, or any possession or territory of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(9) DENIES BENEFITS.—An act, policy, or practice of a foreign country denies benefits to the United States under a trade agreement if the act, policy, or practice—

(A) nullifies, impairs, or impedes attainment of the objectives of such trade agreement, or

(B) constitutes an unfair trade concessions requirement with respect to any product or service within the purview of such trade agreement.

(10) UNFAIR TRADE CONCESSIONS REQUIREMENT.—

(A) IN GENERAL.—The term 'unfair trade concessions requirement' means any act, practice, or policy of a foreign government which, as a practical matter, unreasonably requires that—

(i) substantial direct investment in the foreign country be made,

(ii) intellectual property be licensed to the foreign country or to any firm of the foreign country, or

(iii) other collateral concession be made,

as a condition for the importation of any product or service of the United States into the foreign country or as a condition for carrying on business in the foreign country.

(B) DETERMINATIONS.—The existence of an unfair trade concessions requirement may be inferred from existing circumstances if direct evidence of any act, practice, or policy of a foreign country constituting a requirement described in subparagraph (A) is not otherwise available.

* * * * * * *

SEC. 302. INITIATION OF INVESTIGATIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) FILING OF PETITION.—

(1) IN GENERAL.—Any interested person may file a petition with the [United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative")] *Trade Representative* requesting the President to take action under

section 301 and setting forth the allegations in support of the request.

* * * * * * *

(c) DETERMINATION TO INITIATE BY MOTION OF TRADE REPRESENTATIVE.—

(1) DETERMINATION TO INITIATE.—If the Trade Representative determines with respect to any matter that an investigation should be initiated in order to advise the President concerning the exercise of the President's authority under section 301, the Trade Representative shall publish such determination in the Federal Register [and such determination shall be treated as an affirmative determination under subsection (b)(2)].

(2) RESPONSE TO NATIONAL TRADE ESTIMATES.—

(A) IN GENERAL.—The Trade Representative shall, on the basis of the annual National Trade Estimates submitted to the President under section 181(b), initiate investigations under this chapter with respect to those acts, policies, and practices identified in each of such National Trade Estimates the pursuit of which is most likely to result in the greatest expansion of United States exports, either directly or through the establishment of a beneficial precedent.

(B) EXCEPTION.—The Trade Representative is not required under this paragraph to initiate an investigation with respect to an act, policy, or practice described in subparagraph (A) if the Trade Representative determines, after consulting a majority of the representatives of the domestic industry affected by such acts, policies, or practices, that the initiation of such investigation would be detrimental to other efforts being made to eliminate such acts, policies, or practices.

(3) RESPONSE TO IDENTIFICATION OF COUNTRIES UNDER SECTION 182.—

(A) IN GENERAL.—By no later than the date that is 30 days after the date on which a country is identified under section 182(a), the Trade Representative shall initiate an investigation under this chapter with respect to any act, policy, or practice of that country that—

(i) was the basis for such identification, and

(ii) is not at the time the subject of any other investigation or action under this chapter.

(B) EXCEPTIONS.—The Trade Representative is not required under subparagraph (A) to initiate an investigation under this chapter with respect to any act, policy, or practice of a foreign country identified under section 182(a) if the Trade Representative determines that—

(i) the initiation of the investigation would be detrimental to United States national economic interests, or

(ii) the foreign country has entered into good faith negotiations to remedy the acts, policies, and practices that resulted in the identification of the foreign country under section 182(a).

(C) NOTICE OF EXCEPTIONS.—If the Trade Representative makes a determination under subparagraph (B) not to initiate an investigation, the Trade Representative shall submit to the Congress a written report setting forth, in detail—

(i) the reasons for the determination, and

(ii) either—

(I) the United States economic interests that would be adversely affected by the investigation, or

(II) the progress being made in the negotiations described in subparagraph (B)(ii).

(D) CONSULTATIONS.—The Trade Representative shall, from time to time, consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officers of the United States Government, during any investigation initiated under this chapter by reason of subparagraph (A).

[(2)] *(4)* CONSULTATION BEFORE INITIATION.—The Trade Representative shall, before making any determination [under paragraph (1)] *under this subsection*, consult with appropriate committees established pursuant to section 135.

(d) USE OF EXPORT ENHANCEMENT PROGRAM IN CASES OF ALLEGED UNFAIR AGRICULTURAL TRADE.—

(1) DETERMINATION OF TRADE REPRESENTATIVE.—

(A) If the Trade Representative initiates an investigation under this chapter with respect to any act, policy, or practice that the Trade Representative has reason to believe may impair, or threaten to impair, sales of agricultural commodities, or products of agricultural commodities, of the United States in the markets of any foreign country, the Trade Representative shall, after consulting with the Secretary of Agriculture and the heads of all other appropriate Federal departments and agencies, determine whether the provision of surplus commodities, and the products of surplus commodities, under the program established under section 1127 of the Food Security Act of 1985 (7 U.S.C. 1736v) to United States exporters, users, and processors and foreign purchasers would be an appropriate action to offset the act, policy, or practice that is the subject of such investigation.

(B) The Trade Representative shall submit to the President and the Congress a report on any determination made under subparagraph (A) that includes the reasons on which the determination is based. If the determination is affirmative, the report shall set forth recommendations concerning the scope and application of any directive the President may issue by reason of paragraph (2).

(2) IF THE TRADE REPRESENTATIVE MAKES AN AFFIRMATIVE DETERMINATION UNDER PARAGRAPH (1)(A), THE PRESIDENT SHALL.—

(A) issue a directive to the Commodity Credit Corporation that requires the Commodity Credit Corporation to provide, to the extent the President determines to be appropriate,

surplus agricultural commodities, or the products of surplus agricultural commodities, under the program established under section 1127 of the Food Security Act of 1985 (7 U.S.C. 1736v), to United States exporters, users, processors, and to foreign purchasers for the purpose of offsetting the act, policy, or practice that is the subject of the affirmative determination made under paragraph (1)(A), or

(B) submit to the Congress a written statement explaining why the President has declined to issue such a directive.

(3) THE PRESIDENT SHALL REVOKE ANY DIRECTIVE ISSUED BY REASON OF PARAGRAPH (2)(A) IF.—

(A) the Trade Representative makes a negative determination under section 304(a) with respect to the act, policy, or practice that such directive was to offset, or

(B) such act, policy, or practice is eliminated or fully offset.

(4) Section 1127(i) of the Food Security Act of 1985 (7 U.S.C. 1736v(i)) shall not apply to agricultural commodities, or products of agricultural commodities, provided by reason of this subsection.

SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

(a) IN GENERAL.—On the date [an affirmative determination is made under section 302(b)] *on which an investigation under this chapter is initiated*, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition or the determination of the Trade Representative under section 302(c)(1). If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate representatives provided for under section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

* * * * * * *

[SEC. 304. RECOMMENDATIONS BY THE TRADE REPRESENTATIVE.

[(a) RECOMMENDATIONS.—

[(1) IN GENERAL.—On the basis of the investigation under section 302 and the consultations (and the proceedings, if applicable) under section 303 and subject to subsection (b), the Trade Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the matters under investigation. The Trade Representative shall make that recommendation not later than—

[(A) 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the "Subsidies Agreement");

[(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

[(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

[(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

[(2) SPECIAL RULE.—In the case of any petition—

[(A) an investigation with respect to which is initiated on or after the date of enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

[(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Trade Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

[(3) REPORT IF SETTLEMENT DELAYED.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement), the Trade Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

[(b) CONSULTATION BEFORE RECOMMENDATION.—Before recommending that the President take action under section 301 with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 302, the Trade Representative, unless he determines that expeditious action is required—

[(1) shall provide opportunity for the presentation of views, including public hearing if requested by any interested person;

[(2) shall obtain advice from the appropriate advisory representatives provided for under section 135; and

[(3) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Trade Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.]

SEC. 304. ACTIONS IN RESPONSE TO INVESTIGATIONS.

(a) DETERMINATION OF UNFAIR PRACTICES.—

(1) IN GENERAL.—By no later than the date that is 9 months after the date on which an investigation is initiated under section 302, the Trade Representative shall, on the basis of such investigation determine whether—

(A) the United States is being denied any rights to which the United States is entitled under any trade agreement, or

(B) any act, policy, or practice of a foreign country that is the subject of such investigation is described in section 301(a)(1)(B).

(2) CONSULTATION.—Before making a determination and recommendation under paragraph (1), the Trade Representative, unless expeditious action is required—

(A) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person,

(B) shall obtain advice from the appropriate advisory representatives provided for under section 135, and

(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Trade Representative does not comply with subparagraphs (A) and (B) because expeditious action is required, the Trade Representative shall, after making the determination and recommendation under paragraph (1), comply with such subparagraphs.

(3) EXPORT TARGETING AND INTELLECTUAL PROPERTY INVESTIGATIONS.—

(A) IN GENERAL.—If an investigation is initiated under this chapter—

(i) by reason of a petition that alleges export targeting, or

(ii) by reason of section 302(c)(3),

the Trade Representative shall make the determination required under paragraph (1) with respect to such allegation by no later than the date that is 6 months after the date on which such investigation is initiated.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply with respect to any investigation initiated by reason of section 302(c)(3) if the Trade Representative determines that—

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights.

The Trade Representative shall publish in the Federal Register notice of any determination made under this subparagraph.

(4) RECOMMENDATIONS.—If the Trade Representative makes an affirmative determination under paragraph (1), the Trade Representative shall, by no later than the date that is 30 days before the date on which the President is required to take action under subsection (b)(1), recommend actions the President should take under subsection (b)(1).

(5) PUBLICATION.—The Trade Representative shall submit to the President, and publish in the Federal Register, any determinations made under this subsection with respect to an investigation.

(b) ACTION REQUIRED TO BE TAKEN.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, if the Trade Representative makes an affirmative determination under subsection (a)(1), the President shall, before the applicable deadline, take whatever actions described in subsections (b)(1) and (c) of section 301 that are necessary to enforce all rights, and eliminate or offset all acts, policies, and practices, that are the subject of such affirmative determination.

(2) APPLICABLE DEADLINE.—

(A) IN GENERAL.—For purposes of this subsection, the term "applicable deadline" means—

(i) in the case of an investigation under this chapter that is initiated by reason of section 302(c)(3)—

(I) if subsection (a)(3)(A) applies to such investigation, the date that is 30 days after the date on which the affirmative determination is made under subsection (a)(1), or

(II) if subsection (a)(3)(A) does not apply to such investigation, the date that is 4 months after the date on which the affirmative determination is made under subsection (a)(1),

(ii) if clause (i) does not apply, if the Trade Representative is required under section 303(a) to request proceedings under the formal dispute settlement proce-

dures that are provided under any trade agreement, and if such proceedings are initiated with respect to the subject of the affirmative determination made under subsection (a)(1), the earlier of—

(I) the date that is 6 months after the date on which a preliminary or final ruling on the dispute is issued under such settlement procedures that is consonant with the affirmative determination made under subsection (a)(1), or

(II) the date, subject to adjustment under subparagraph (B), that is 19 months after the date on which the investigation is initiated under section 302, or

(iii) if clauses (i) and (ii) do not apply, the date, subject to adjustment under subparagraph (C), that is 15 months after the date on which the investigation is initiated under section 302.

(B) POSTPONEMENTS FOR CERTAIN DELAYS IN DISPUTE SETTLEMENT PROCEEDINGS.—The President may postpone the applicable deadline determined under subparagraph (A)(ii)(II) by the length of any periods of delay in the formal dispute settlement proceedings referred to in subparagraph (A)(ii)—

(i) which are requested by the petitioner or a majority of the representatives of the domestic industry that would benefit from the enforcement of the rights, or elimination of the acts, policies, and practices that are the subject of such dispute settlement proceedings, or

(ii) for which the petitioner or a majority of such representatives are responsible.

(C) POSTPONEMENT OF ACTION IN CERTAIN CASES FOR SIXTY DAYS.—The President may postpone any applicable deadline determined under subparagraph (A)(iii) for a 60-day period by submitting to the Congress a written statement which—

(i) certifies that progress is being made to—

(I) enforce the rights of the United States that are the subject of the affirmative determination made under subsection (a)(1)(A), and

(II) eliminate or reduce the acts, policies, and practices that are the subject of the affirmative determination made under subsection (a)(1)(B), and

(ii) fully describes the factual basis on which such certification is made.

(D) LIMITATION ON CERTAIN POSTPONEMENTS.—No more than 2 postponements may be made under subparagraph (C) with respect to the same investigation under this chapter.

(3) EXCEPTIONS.—The President is not required to take action under paragraph (1) if—

(A) either—

(i) the CONTRACTING PARTIES of the General Agreement on Tariffs and Trade make a determination that conflicts with the affirmative determination made by the Trade Representative under subsection (a)(1), or

(ii) a ruling is issued under the formal dispute settlement procedures provided under any trade agreement (other than the General Agreement on Tariffs and Trade) that conflicts with the affirmative determination made by the Trade Representative under subsection (a)(1),

(B) an agreement is entered into between the United States and the foreign country involved in such affirmative determination and—

(i) a majority of the representatives of the domestic industry that would benefit from enforcement of the rights, or elimination of the acts, and practices which were the subject of such affirmative determination agree, or

(ii) the petitioner, if any, agrees,

that such agreement adequately offsets or eliminates such acts, policies, and practices and enforces such rights,

(C) the President certifies to the Congress that the taking of action under paragraph (1) with respect to such affirmative determination would cause serious harm to the national security of the United States,

(D) the President submits to the Congress a written statement certifying that—

(i) the enforcement of such rights and the elimination of such acts, policies, and practices is impossible, and

(ii) such foreign country has entered into an agreement with the United States to provide the United States with trade benefits in the economic sector of which such domestic industry is a part (or the economic sector as closely related as possible to such economic sector) that compensate for the denial of such rights and the refusal to eliminate such acts, policies, and practices, or

(E) such acts, policies, and practices are unreasonable or discriminatory, or such affirmative determination was made in an investigation initiated by reason of section 302(c)(3), and the President submits to the Congress a written statement certifying that—

(i) the elimination of such acts, policies, and practices is impossible, and

(ii) the taking of action under paragraph (1) would not be in the national economic interest.

(c) Review of Necessity.—

(1) In general.—If—

(A) a particular action has been taken under subsection (b) or section 301 during any 4-year period, and

(B) neither the petitioner nor any representative of the domestic industry described in subsection (b)(3)(B)(i) has submitted to the Trade Representative during the last 60 days of such 4-year period a written request for the continuation of such action,

such action shall terminate at the close of such 4-year period.

(2) NOTICE OF POTENTIAL TERMINATION.—The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in subsection (b)(3)(B)(i) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.

(3) FORMAL REVIEW.—If a request is submitted to the Trade Representative under paragraph (1)(B) to continue taking a particular action under subsection (b) or section 301, the Trade Representative shall conduct a review of—

(A) the effectiveness of—

(i) such action, and

(ii) other actions that could be taken (including actions against other products or services),

in achieving the objectives described in subsection (b)(1) or section 301, and

(B) the effects of such actions on the United States economy, including consumers.

The Trade Representative shall submit a report on such review to the President and to the Congress and shall include in such report any modifications the Trade Representative recommends the President make in the actions taken under subsection (b) or section 301 as a result of such review.

(4) MODIFICATION.—Upon receiving a report submitted under paragraph (3), the President may modify the actions that are the subject of such report.

(d) MODIFICATION AND TERMINATION OF ACTIONS.—The President may modify or terminate an action taken under subsection (b) if—

(1) the conditions described in any subparagraph of subsection (b)(3) occur, or

(2) the burden or restriction on the United States economy of the denial of rights, or of the acts, policies, and practices, that are the subject of the affirmative determination made under subsection (a)(1) has increased or decreased.

(e) NOTICE.—The President shall publish in the Federal Register notice of any determination made, or action taken, under this section, including the reasons on which the determination or action is based.".

SEC. 307. ADDITIONAL ACTIONS IN CERTAIN CASES OF EXPORT TARGETING.

(a) NEGOTIATIONS.—If—

(1) the Trade Representative makes an affirmative determination under section 304(a)(1)(B) involving export targeting by a foreign country, and

(2) the President does not take any action under section 304(b) with respect to such determination by reason of section 304(b)(3)(E),

the Trade Representative shall take action to initiate negotiations with the foreign country for the purpose of obtaining an agreement under which the foreign country will eliminate, or fully offset the effects of, the export targeting or provide additional trade benefits to the United States as compensation for the export targeting. The Trade Representative shall make periodic reports to the President on the progress of actions taken under this subsection.

(b) ACTIONS TO IMPROVE COMPETITIVENESS IN DOMESTIC INDUSTRY.—

(1) IN GENERAL.—If paragraphs (1) and (2) of subsection (a) apply and the Trade Representative is not successful in obtaining an agreement described in subsection (a) within a reasonable period of time, the President—

(A) shall establish an advisory panel to recommend measures which will promote the competitiveness of the domestic industry affected by the export targeting,

(B) on the basis of the report of such panel submitted under paragraph (2)(B), may take any administrative actions authorized under any other provision of law, and, if necessary, propose legislation to implement any other actions, that would restore or improve the international competitiveness of the domestic industry affected by the export targeting, and

(C) shall, by no later than the date that is 30 days after the date on which the report of such panel is submitted under paragraph (2)(B), submit a report to the Congress on the administrative actions taken, and legislative proposals made, under subparagraph (B) with respect to the domestic industry affected by the export targeting.

(2) ADVISORY PANELS.—

(A) IN GENERAL.—The advisory panels established under paragraph (1)(A) shall consist of individuals appointed by the President who—

(i) earn their livelihood in the private sector of the economy, including individuals who represent management and labor in the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 304(a), and

(ii) by education or experience, are qualified to serve on the advisory panel.

(B) REPORT.—By no later than the date that is 6 months after the date on which an advisory panel is established under paragraph (1)(A), the advisory panel shall submit to the President and to the Congress a report on measures that the advisory panel recommends be taken by the United States to promote the competitiveness of the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 304(a).

SEC. 406. MARKET DISRUPTION.

* * * * * * *

(b) For purposes of sections 202 and 203, *as in effect before the enactment of the Omnibus Trade Act of 1987,* an affirmative determination of the Commission under subsection (a) shall be treated as an affirmative determination under section 201(b), except that—

(1) the President may take action under sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

* * * * * * *

(c) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under section 202 and 203, *as in effect before the enactment of the Omnibus Trade Act of 1987* as if an affirmative determination of the Commission had been made under subsection (a).* * *

SEC. 503. ELIGIBLE ARTICLES.

* * * * * * *

(c)(1) The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

* * * * * * *

[(B) watches,]

(B) watches, except those watches entered, or withdrawn from warehouse, for consumption after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or in an insular possession of the United States,

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to [section 203] *chapter 1 of title II* of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

* * * * * * *

TRADE AND TARIFF ACT OF 1984, AS AMENDED

* * * * * * *

Subtitle C—Miscellaneous Provisions

* * * * * * *

SEC. 236. USER FEE FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS.

(a) The Secretary of the Treasury shall make customs services available and charge a fee for the use of such customs services at—

(1) the airport located at Lebanon, New Hampshire, [and]

(2) the airport located at Pontiac/Oakland, Michigan, and

[(2)] *(3)* any other airport designated by the Secretary of the Treasury under subsection (c).

* * * * * * *

(c) The Secretary of the Treasury may designate [20] airports under this subsection. An airport may be designated under this subsection only if—

(1) the Secretary of the Treasury has made a determination that the volume or value of business cleared through such airport is insufficient to justify the availability of customs services at such airport, and

(2) the governor of the State in which such airport is located approves such designation.

* * * * * * *

SEC. 307. NEGOTIATING AUTHORITY WITH RESPECT TO FOREIGN DIRECT INVESTMENT.

* * * * * * *

(b)(1) * * *

* * * * * * *

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 123 of the Trade Act of 1974 (19 U.S.C. 2133) for providing compensation for actions taken [under section 203] *under Chapter 1 of title II* of that Act.

* * * * * * *

SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

* * * * * * *

(b) ITC REPORTS.—In any report by the United States International Trade Commission (hereinafter referred to in this title as the "Commission") to the President [under section 201(d)(1)] *under section 203(a)* of the Trade Act of 1974 regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

(c) For purposes of [subsections (a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974, the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under [subsections (a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974 unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974, determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974.

(e)(1) Any proclamation issued under [section 203] *chapter 1 of title II* of the Trade Act of 1974 that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 shall remain in effect until modified or terminated.

(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the President may reduce or terminate the application

of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of [subsections (h) and (i) of section 203] *section 203(b)(3)(E) or 205(c)* of the Trade Act of 1974.

* * * * * * *

SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

* * * * * * *

(d) The emergency action provided under subsection (c) shall cease to apply—

(1) upon the proclamation of import relief [under section 202(a)(1)] *under chapter 1 of title II* of the Trade Act of 1974;

(2) on the day the President makes a determination under section [203(b)(2)] *204* of such Act not to impose import relief;

* * * * * * *

SEC. 805. ENFORCEMENT AUTHORITY.

* * * * * * *

(d)(1) Any steel product that is manufactured in a country that is not party to a bilateral arrangement from steel which was melted and poured in a country that is party to a bilateral arrangement (hereafter in this subsection referred to as an "arrangement country") may be treated for purposes of the quantitative restrictions and related terms under that arrangement as if it were a product of the arrangement country.

(2) The President may direct the Secretary of the Treasury to implement such procedures as may be necessary or appropriate to carry out the purpose of paragraph (1).

(e) The United States Trade Representative shall request the inclusion of restraints on welded steel wire fence panels, wire fabric, and welded steel wire mesh for concrete reinforcement in the coverage of each bilateral arrangement. If any foreign country or customs union refuses to so expand the coverage of the bilateral arrangement—

(1) neither the President nor any other officer or employee of the United States shall, in the administration of the bilateral arrangement, have the authority to agree to any request from such foreign country or customs union for any technical adjustment, exception, or modification to, or from, the terms of the bilateral arrangement, and

(2) if appropriate, the President shall require entry-by-entry certificate of compliance with the bilateral arrangement.

TARIFF ACT OF 1930, AS AMENDED

TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

* * * * * * *

SEC. 305. IMMORAL ARTICLES—IMPORTATION PROHIBITED.

(a) PROHIBITION OF IMPORTATION.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, cireular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided,* That the durgs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision; *Provided further,* That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

(b) ENFORCEMENT PROCEDURES.—Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Court of International Trade from the decision of such customs officer. [Upon the seizure of such book or matter such customs officer shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter siezed.] *Upon the seizure of such book or matter, such customs officer shall transmit information thereof to the United States attorney of the district in which is situated either—*

(1) the office at which such seizure took place; or

(2) the place to which such book or matter is addressed;

and the United States attorney shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized.

(c) Notwithstanding the provisions of subsections (a) and (b), whenever a customs officer discovers any obscene material after such material has been imported or brought into the United States, or attempted to be imported or brought into the United States, he

may refer the matter to the United States attorney for the institution of forfeiture proceedings under this section. Such proceedings shall begin no more than 30 days after the time the material is seized; except that no seizure or forfeiture shall be invalidated for delay if the claimant is responsible for extending the action beyond the allowable time limits or if proceedings are postponed pending the consideration of constitutional issues.

(d) Upon motion of the United States, a court shall stay such civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter.

* * * * * * *

PART II—UNITED STATES TARIFF COMMISSION

SEC. 330. ORGANIZATION OF COMMISSION.

* * * * * * *

(d) EFFECT OF DIVIDED VOTE IN CERTAIN CASES.—(1) In a proceeding in which the Commission is required to determine—

* * * * * * *

[(2) If under section 201 or 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 201(d)(1) of such Act or the finding described in section 406(a)(3) of such Act, as the case may be (hereafter in this subsection referred to as a "remedy finding"), then—

[(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of sections 202 and 203 of such Act, be treated as the remedy finding of the Commission, or

[(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 203(b) of such Act that—

[(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of sections 202 and 203 of such Act, be treated as the remedy finding of the Commission, or

[(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of sections 202 and 203 of such Act, be treated as the remedy finding of the Commission.]

(2)(A) If under section 201 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under paragraph (1), that serious injury exists and a majority of the commissioners voting are unable to agree on a rec-

ommendation described in section 203(b)(1)(A) (hereafter in this subparagraph referred to as a 'remedy recommendation'), then—

(i) if a plurality of commissioners so voting agree on a remedy recommendation, such remedy recommendation shall, for purposes of section 204, be treated as the remedy recommendation of the Commission, or

(ii) if a plurality of commissioners so voting do not agree on a remedy recommendation, two groups of an equal number of commissioners each agree upon a remedy recommendation, and the President reports under section 204(c)(2) that—

(I) the President is taking the action agreed upon by one such group, then the remedy recommendation agreed upon by the other group shall, for purposes of section 204(b), be treated as a remedy recommendation of the Commission, or

(II) the President is taking action which differs from the action agreed upon by both such groups, or the President will not take any action, then the remedy recommendation agreed upon by either such group may be considered by the Congress as the remedy recommendation of the Commission and shall, for purposes of section 204, be treated as the remedy recommendation of the Commission.

(B) If under section 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under paragraph (1), that market disruption exists and a majority of the commissioners voting are unable to agree on the finding described in section 406(a)(3) (hereafter in this subparagraph referred to as a 'remedy finding'), then—

(i) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of sections 202 and 203 of the Trade Act of 1974 (as in effect before the enactment of the Omnibus Trade Act of 1987), be treated as the remedy finding of the Commission, or

(ii) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under subsection (b) of such section 203 that—

(I) the President is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of such sections 202 and 203, be treated as a remedy recommendation of the Commission, or

(II) the President is taking action which differs from the action agreed upon by both such groups, or the President will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of such sections 202 and 203, be treated as the remedy recommendation of the Commission.

* * * * * * *

[(4) In a case of which paragraph (2)(b)(ii) applies, for purposes of section 203(c)(1) of the Trade Act of 1974, notwithstanding section 152(a)(1()A) of such Act, the second blank space in the concurrent resolution described in such section 152 shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners ————, ————, and ————." The three blank spaces shall be filed with the names of the appropriate Commissioners.]

(4)(A) In a case to which paragraph (2)(A)(ii)(II) applies, for purposes of section 204(b) of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act, the second blank space in the joint resolution described in such section 152 shall be filled with the appropriate date and the following: "The action which shall take effect under section 204(b) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners ————.", the blank space being filled with the names of the appropriate Commissioners.

(B) In a case to which paragraph (2)(B)(ii)(II) applies, for purposes of section 203(c)(1) of the Trade Act of 1974 (as in effect before enactment of the Omnibus Trade Act of 1987), notwithstanding section 152(a)(1)(A) of such Act, the second blank space in the joint resolution described in such section 152 shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 (as in effect before enactment of the Omnibus Trade Act of 1987) is the finding or recommendation agreed upon by Commissioners ————, ————, and ————.", the three blank spaces being filled with the names of the appropriate Commissioners.

* * * * * * *

(e) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year [1986] *1988* not to exceed [$28,901,000;] *$35,386,000,* of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses.

* * * * * * *

SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

[(a) UNFAIR METHODS OF COMPETITION DELCARED UNLAWFUL.— Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sales by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economincally operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.]

(a)(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) Unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), and (D)) into the United States, or in the

sale of such articles by the owner, importer, consignee, or agent of either, the threat or effect of which is—

(i) to destroy or substantially injure an industry, in the United States;

(ii) to impair or prevent the establishment of such an industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) The importation into the United States, or the sale within the United States after importation, by the owner, importer, or consignee, (or by any agent of the owner, importer, or consignee) of articles that—

(i) infringe a valid and enforceable United States patent or a valid United States copyright registered under title 17, United States Code; or

(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.

(C) The importation into the United States, or the sale within the United States after importation, by the owner, importer, or consignee, (or by any agent of the owner, importer, or consignee) of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946.

(D) The importation by the owner, importer, or consignee, (or by any agent of the owner, importer, or consignee) of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

(2) Subparagraphs (B), (C), and (D) of paragraph (1) apply only if an industry in the United States, relating to the articles, patent, copyright, trademark, or mask work concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), and for purposes of applying paragraph (1)(A) with respect to common law trademarks and trade secrets, an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles, patent, copyright, trademark, trade secrets, or mask work concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

* * * * * * *

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, *except that the Commission may, by issuing a consent order or on the basis of a settlement agreement, termiante any such investigation, in whole or in part, without making such a determination.* Each determination under subsection [(d) or (e)] *(d), (e), (f), (i), or (k)* shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e), [or (f)] *(f), (g), (i), or (k)* may appeal such determination to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of Title 5. Notwithstanding the foregoing provisoins of this subsection, Commission determinations under subsections (d), (e), [and (f)] *(f) and (g)* of this section with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of Title 5.

* * * * * * *

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—*(1)* If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

(2) A complainant may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the 90th day after the date on which the Commission's notice of investigation is published in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. The Commission may require the petitioner to post a bond as a prerequisite to the issuance of an order under this subsection.

(3) The Commission may grant preliminary relief under this subsection or subsection (f) with respect to a violation involving a registered trademark, copyright, or mask work or a patent, to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.

(f) CEASE AND DESIST ORDERS.—(1) [In lieu of] *In addition to, or in lieu of,* taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, if finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be.

(2) Any person who violates an order issued by the Commission under paragrpah (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of [$10,000] *$100,000* or the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g)(1) If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(D) the person fails to show good cause why the person should not be found in default; and

(E) the person seeks relief affecting solely that person,

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, which affects only that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

(2) A general exclusion from entry of the articles concerned, regardless of the source or importer of the article, may be issued if—

(A) no person appeared to contest an investigation concerning a violation of the provisions of this section, and

(B) such a violation is established by substantial, reliable, and probative evidence.

(h) The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

(i) FORFEITURE.—

(1) In addition to taking action under subsection (d), the Commission may issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if—

(A) the owner, importer, or consignee of the article, or any agent thereof, previously attempted to import the article into the United States,

(B) the article was previously denied entry into the United States by reason of an order issued under subsection (d), and

(C) upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article, or any agent thereof, written notice of—

(i) such order, and

(ii) the seizure and forfeiture that would result from any further attempt to import the article into the United States.

(2) The Commission shall notify the Secretary of the Treasury of any order issued under this subsection and, upon receipt of such notice, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this Act.

(3) Upon the attempted entry of articles subject to an order issued under this subsection, the Secretary of the Treasury shall immediately notify all ports of entry of the attempted importation and shall identify the persons notified under paragraph (1)(C).

(4) The Secretary of the Treasury shall provide the written notice described in paragraph (1)(C) to—

(A) the owner, importer, or consignee of any article that is denied entry into the United States by reason of an order issued under subsection (d), or

(B) any agent of such owner, importer, or consignee.

[(g)] *(j)* REFERRAL TO THE PRESIDENT.—(1) If the Commission determined that there is a violation of this section, or that, for purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), [or (f)] *(f), (g), or (i),* with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), [or (f)] *(f), (g), or (i)* with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), [or (f)] *(f), (g), or (i)* with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final *and no seizure shall be made of any article under subsection (i) until such determination becomes final if such bond is posted.*

(4) If the President does not disapprove such determination within such 60-day period, or if he notifes the Commissin before

the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

[(h)] *(k)* PERIOD OF EFFECTIVENESS.—*(1)* Except as provided in subsections (f) and [(g)] *(j),* any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry [notifies], *or order to seize, notifies* the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission, on the basis of a contested proceeding, to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), (g), or (i)—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

[(i)] *(l)* IMPORTATIONS BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsections (d), (e), [or (f)] *(f), (g), or (i),* in cases based on [claims of United States letters patent] *proceeding under subsection (a)(1) involving a patent, copyright, trademark, trade secret, or mask work,* shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, [a patent owner] *an owner of the patent, copyright, trademark, trade secret, or mask work* adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Claims Court pursuant to the procedures of section 1498 of title 28, United States Code.

[(j)] *(m)* DEFINITION OF UNITED STATES.—For purposes of this section and sections 338 and 340, the term "United States" means the customs territory of the United States as defined in general headnote 2 of the Tariff Schedules of the United States.

(n)(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is designed as confidential by the person submitting it may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any persons (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

(A) an officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or

(B) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.

[SEC. 337a. IMPORTATION OF PRODUCTS PRODUCED UNDER PROCESS COVERED BY CLAIMS OF UNEXPIRED PATENT.

[The importation for use, sale, or exchange of a product made, produced, processed, or mined under or by means of a process covered by the claims of any unexpired valid United States letters patent, shall have the same status for the purposes of section 1337 of this title as the importation of any product or article covered by the claims of any unexpired valid United States letters patent.]

[(July 2, 1940, ch. 515, 54 Stat. 724.)]

* * * * * * *

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

* * * * * * *

SEC. 507. TARE AND DRAFT

[The Secretary] *(a) IN GENERAL.—The Secretary* of the Treasury is authorized to prescribe and issue regulations for the ascertainment of tare upon imported merchandise, including the establishment of reasonable and just schedule tares therefor, but [in no case shall there be] *(except as otherwise provided in this section) there shall not be* any allowance for draft or for impurities, other than excessive moisture and impurities not usually found in or upon such or similar merchandise.

(b) CRUDE OIL AND PETROLEUM PRODUCTS.—In ascertaining tare on imports of crude oil, and on imports of petroleum products, allowance shall be made for all detectable moisture and impurities present in, or upon, the imported crude oil or petroleum products.

SEC. 516. PETITIONS BY DOMESTIC INTERESTED PARTIES.

(a)(1) The Secretary shall, upon written request by an interested party furnish the classification and the rate of duty imposed designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

* * * * * * *

(3) Any producer of a raw agricultural product who is considered under section 771(4)(E) to be part of the industry producing a processed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this seciton, be treated as an interested party producing such processed agricultural product.

* * * * * * *

SEC. 555. BONDED WAREHOUSES.

* * * * * * *

[(b) If a State or local governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary of the Treasury that the concession or approval required for the enterprise has been obtained. For purposes of this subsection, the term "duty-free sales enterprise" means an entity that sells, in less than wholesale quantities, duty-free or tax-free merchandise that is delivered from a bonded warehouse to an airport, seaport, or point of exit from the United States for exportation by, or on behalf of, individuals departing from the United States.]

(b) DUTY-FREE SALES ENTERPRISES.—

(1) Duty-free sales enterprises may sell and deliver for export from the customs territory duty-free merchandise in accordance with this subsection and such regulations as the Secretary may prescribe to carry out this subsection.

(2) A duty-free sales enterprise may be located anywhere within—

(A) the same port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), from which a purchaser of duty-free merchandise departs the customs territory; or

(B) 25 statute miles from the exit point through which the purchaser of duty-free merchandise will depart the customs territory.

(3) Each duty-free sales enterprise—

(A) shall establish procedures to provide reasonable assurance that duty-free merchandise sold by the enterprise will be exported from the customs territory;

(B) shall establish and enforce, in accordance with such guidelines as the Secretary may prescribe, restrictions on the sale of duty-free merchandise to any one individual to personal use quantities;

(C) shall display in prominent places within its place of business notices which state clearly that any duty-free merchandise purchased from the enterprise—

(i) has not been subject to any Federal duty or tax,

(ii) if brought back to the customs territory, must be declared and is subject to Federal duty and tax; and

(iii) is subject to the customs laws and regulation of any foreign country to which it is taken,

except that the duty-free sales enterprise is not required to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate that they were items sold by a duty-free sales enterprise;

(D) may unpack merchandise into saleable units after it has been entered for warehouse and placed in a duty-free sales enterprise, without requirement of further permits; and

(E) shall deliver duty-free merchandise—

(i) in the case of a duty-free sales enterprise that is an airport store—

(I) to the purchaser (or a family member or companion traveling with the purchaser) in an area that is within the airport and to which access to passengers is restricted to those departing from the customs territory,

(II) to the purchaser (or a family member or companion traveling with the purchaser) at the exit point of a specific departing flight;

(III) by placing the merchandise within the aircraft on which the purchaser will depart for carriage as passenger baggage; or

(IV) if the duty-free sales enterprise has made a good faith effort to effect delivery through one of the methods described in subclause (I), (II), or (III) but is unable to do so, by any other reasonable method to effect delivery; or

(ii) in the case of a duty-free sales enterprise that is a border store—

(I) at a merchandise storage location at or beyond the exit point; or

(II) at any location approved by the Secretary before the date of enactment of the Omnibus Trade Act of 1987.

(4) If a State or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free enterprise demonstrates to the Secretary that the concession or approval required for the enterprise has been obtained.

(5) This subsection does not prohibit a duty-free sales enterprise from offering for sale and delivering to, or on behalf of, individuals departing from the customs territory merchandise other than duty-free merchandise, except that such other merchandise may not be stored in a bonded warehouse facility other than than a bonded facility used for retail sales.

(6) Merchandise that is purchased in a duty-free sales enterprise is not eligible for exemption from duty under subpart A of part 2 of schedule 8 of the Tariff Schedules of the United States if such merchandise is brought back to the customs territory.

(7) The Secretary shall by regulation establish a separate class of bonded warehouses for duty-free sales enterprises. Regulations issued to carry out this paragraph shall take into ac-

count the unique characteristics of the different types of duty-free sales enterprises.

(8) For purposes of this subsection—

(A) The term "airport store" means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory from an international airport located within the customs territory.

(B) The term "border store" means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory through a land or water border by a means of conveyance other than an aircraft.

(C) The term "customs territory" means the customs territory of the United States and foreign trade zones.

(D) The term "duty-free sales enterprise" means a person that sells, for personal use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory.

(E) The term "duty-free merchandise" means merchandise sold by a duty-free sales enterprise on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory.

(F) The term "exit point" means the area in close proximity to an actual exit for departing from the customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that duty-free merchandise delivered in the gate holding area will be exported from the customs territory.

(G) The term "personal use quantities" means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others.

* * * * * * *

PART V—ENFORCEMENT PROVISIONS

* * * * * * *

SEC. 623. BONDS AND OTHER SECURITY

* * * * * * *

(c) CANCELLATION OF BOND.—The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. *In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.*

TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

* * * * * * *

Subtitle II—Imposition of Antidumping Duties

* * * * * * *

Sec. 740. Monitoring of multiple dumping offenders.

* * * * * * *

Subtitle D—General Provisions

Sec. 771. Definitions; special rules.

* * * * * * *

Sec. 780. Application of title to governmental importations.

Subtitle A—Imposition of Countervailing Duties

SEC. 701. COUNTERVAILING DUTIES IMPOSED.

(a) GENERAL RULE.—If—

(1) the administering authority determines that—

(A) a country under the Agreement, or

(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy. For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise [that is equivalent to the sale of the merchandise].

(b) COUNTRY UNDER THE AGREEMENT.—For purposes of this subtitle, the term "country under the Agreement" means a country—

* * * * * * *

(c) The United States Trade Representative may revoke the status of a foreign country as a country under the Agreement for purposes of this subtitle if such foreign country—

(1) announces that such foreign country does not intend, or is not able, to honor the obligations it has assumed with respect to the United States, or the Agreement for purposes of this subtitle, or

(2) does not in fact honor such obligations.

[(c)] *(d)* Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 1677–1(a)(1) of this title, is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 1677–1(a)(3) of this title.

SEC. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

(a) * * *

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—A countervailing duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), (E), [or (F)] *(F), or (G)* of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

* * * * * * *

(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that critical circumstances may exist, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the class or kind of merchandise that is the subject of the investigation. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the class or kind of merchandise that is the subject of the investigation and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 705(a), the investigation is terminated, or the administering authority withdraws the request.

SEC. 703. PRELIMINARY DETERMINATIONS.

* * * * * * *

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly *(at any time after the initiation of the investigation under this subtitle)* determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

* * * * * * *

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) * * *

* * * * * * *

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) may, by petition filed with the Commission and with notice of the administering authority, ask for a review of the suspension.

SEC. 705. FINAL DETERMINATIONS.

* * * * * * *

(b) FINAL DETERMINATION BY COMMISSION.—

* * * * * * *

(4) CERTAIN ADDITIONAL FINDINGS.—

[(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include findings as to whether—

[(i) there is material injury which will be difficult to repair, and

[(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.]

(A) RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(2) is affirmative, and the Commission determines under subsection (b)(1) that material injury exists, the Commission shall determine whether retroactive imposition of a countervailing duty on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time and will be difficult to repair.

(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Commission shall consider whether—

(I) massive imports of the merchandise over a relatively short period of time can be accounted for by efforts to avoid the potential imposition of countervailing duties,

(II) foreign economic conditions led to the massive imports of the merchandise,

(III) such foreign economic conditions are likely to persist, and

(IV) the impact of the massive imports of the merchandise is likely to continue after issuance of the countervailing duty order under this subtitle.

* * * * * * *

SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) * * *

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—An antidumping proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), (E), [or (F)] *(F), or (G)* of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

* * * * * * *

(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that critical circumstances may exist, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the class or kind of merchandise that is the subject of the investigation. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the class or kind of merchandise that is the subject of the investigation and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 735(a), the investigation is terminated, or the administering authority withdraws the request.

SEC. 733. PRELIMINARY DETERMINATIONS.

* * * * * * *

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

"(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly *(at any time after the initiation of the investigation under this subtitle)* determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

* * * * * * *

(5) FICTICIOUS MARKETS.—The occurrence of different movements in the prices at which different forms of any merchandise subject to an antidumping duty order issued under this

title are sold (or, in the absence of sales, offered for sale) after the issuance of such order in the principal markets of the foreign country from which the merchandise is exported may be considered by the administering authority as evidence of the establishment of a fictitious market for the merchandise if the movement in such prices appears to reduce the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise.

* * * * * * *

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION

(a) * * *

* * * * * * *

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation or

(2) an interested party described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) may, by petition file with the Commission and with notice to the administering authority, ask for a review of the suspension.

* * * * * * *

(l) SPECIAL RULE FOR NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that—

(A) such agreement satisfies the requirements of subsection (d), and

(B) will prevent the suppression or undercutting of the domestic price levels of merchandise manufactured in the United States that is caused by imports of the merchandise under investigation.

(2) FAILURE OF AGREEMENTS.—If the administering authority determines that an agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (i) shall apply.

SEC. 735. FINAL DETERMINATIONS

* * * * * * *

(b) FINAL DETERMINATION BY COMMISSION.—

* * * * * * *

[(4) CERTAIN ADDITIONAL FINDINGS.—

[(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.]

(A) RETROACTIVE APPLICATION.—

(i) IN GENERAL.— If the finding of the administering authority under subsection (a)(3) is affirmative, and the Commission determines under subsection (b)(1) that material injury exists, the Commission shall determine whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time.

(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Commission shall consider whether—

(I) massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping duties,

(II) foreign economic conditions led to the massive imports of the merchandise,

(III) such foreign economic conditions are likely to persist, and

(IV) the impact of the massive imports of the merchandise is likely to continue after issuance of the antidumping duty order under this subtitle.

SEC. 736. ASSESSMENT OF DUTY.

* * * * * * *

(c) SECURITY IN LIEU OF ESTIMATED DUTY PENDING EARLY DETERMINATION OF DUTY.—

[(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if, on the basis of information presented to it by any manufacturer, producer, or exporter in such form and within such time as it may require, it is satisfied that it will be able to determine, within 90 days after the date of publication of an order under subsection (a), the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

[(A) an affirmative preliminary determination by the administering authority under section 733(b), or

[(B) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b).]

(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if—

(A) the investigation has not been designated as extraordinarily complicated by reason of—

(i) the number and complexity of the transactions to be investigated or adjustments to be considered,

(ii) the novelty of the issues presented, or

(iii) the number of firms whose activities must be investigated,

(B) the final determination in the investigation has not been postponed under section 735(a)(2)(A);

(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a), of the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(i) an affirmative preliminary determination by the administering authority under section 733(b), or

(ii) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b);

(D) the person described in subparagraph (C) provides credible evidence that the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a); and

(E) the data concerning the foreign market value and the United States price apply to sales in the usual commercial quantities and in the ordinary course of trade and the

number of such sales are sufficient to form an adequate basis for comparison.

* * * * * * *

(4) PROVISION OF PROPRIETARY INFORMATION; WRITTEN COMMENTS.—Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the administering authority shall—

(A) make all proprietary information supplied to the administering authority under paragraph (1) available under a protective order described in section 777(c)(1)(B) to all interested parties described in subparagraph (C), (D), (E), (F), or (G) of section 771(9), and

(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.

* * * * * * *

SEC. 739. TRANSACTIONS DESIGNED TO EVADE PAYMENT OF ANTI-DUMPING DUTIES

(a) IN GENERAL.—If the administering authority determines that merchandise is imported into the customs territory of the United States by, or for the account of, a manufacturer, producer, seller, or exporter (as defined in section 771(13)) for the purpose of absorbing antidumping duties imposed under this title on behalf of a United States purchaser, the administering authority shall declare the importation a sham transaction and direct customs officers to treat the United States purchaser as the importer of record for the purpose of assessing liability for the payment of such duties.

(b) FACTORS TO BE CONSIDERED.—In determining whether a transaction is a sham, the administering authority shall consider whether—

(1) the manufacturer, producer, seller, or exporter of the merchandise has actual notice of an actual antidumping proceeding.

(2) the transaction is an unusual method of importation by, or for the account of, the manufacturer, producer, seller, or exporter, and

(3) the size and nature of the exporter's commercial operations with respect to the merchandise in the United States is insignificant.

SEC. 740. MONITORING OF MULTIPLE DUMPING OFFENDERS.

(a) ESTABLISHMENT OF PRODUCT MONITORING CATEGORY.—

(1) PETITIONS.—

(A) IN GENERAL.—An eligible domestic entity may file a petition with the administering authority requesting that a product monitoring category be established with respect to merchandise at any time after the merchandise becomes the subject of an affirmative dumping determination.

(B) CONTENTS.—Any petition filed under subparagraph (A) shall—

(i) identify the merchandise that is the subject of an affirmative dumping determination.

(ii) specify the merchandise that the petitioner seeks to have included in the same product monitoring category as the merchandise that is the subject of such affirmative dumping determination,

(iii) specify any merchandise the petitioner particularly seeks to have excluded from such product monitoring category.

(iv) identify merchandise in terms of the designations used in the Tariff Schedules of the United States, and

(v) provide reasons why merchandise should be included or excluded from the product monitoring category into which the merchandise that is the subject of such affirmative dumping determination is classified.

(2) DETERMINATIONS ON SUFFICIENCY OF PETITION.—

(A) ADMINISTERING AUTHORITY.—Upon receiving a petition under paragraph (1), the administering authority shall promptly verify the affirmative dumping determination on which the petition is based and upon verification, transmit a copy of the petition to the Commission.

(B) COMMISSION.—Upon receipt of a petition under subparagraph (A), the Commission shall—

(i) determine if the petition is an eligible domestic entity, and

(ii) if the petitioner is an eligible domestic entity, promptly proceed to establish a product monitoring category with respect to the merchandise that is the subject of the affirmative dumping determination.

(3) NOTICE; HEARINGS.—Upon receipt of a petition under subparagraph (A), the Commission shall—

(A) publish notice in the Federal Register that the petition has been received; and

(B) provide opportunity for the presentation of views regarding the establishment of the requested product monitoring category, including a public hearing if requested by any interested person.

(4) DETERMINATIONS.—

(A) IN GENERAL.—By no later than the date that is 90 days after the date on which a petition is filed under paragraph (1), the Commission shall determine the scope of the product monitoring category into which the merchandise that is the subject of the affirmative dumping determination identified in such petition shall be classified for purposes of this section.

(B) MODIFICATIONS NOT REQUESTED BY PETITION.—

(i) IN GENERAL.—The Commission may, on its own initiative, make a determination modifying the scope of any product monitoring category established under subparagarph (A) at any time.

(ii) NOTICE AND HEARING.—Determinations may be made under clause (i) only after the Commission has—

(I) published in the Federal Register notice of the proposed modification, and

(II) provided interested parties an opportunity for a hearing, and a period for the submission of written comments, on the classification of merchandise into the product monitoring categories to be affected by such determination.

(C) BASIS OF DETERMINATIONS.—In making determinations under subparagraph (A) or (B), the Commission shall ensure that each product monitoring category consists of similar merchandise which—

(i) is produced by similar processes under similar circumstances, and

(ii) has similar uses.

(b) INITIATION OF MONITORING.—The administering authority shall establish a program for monitoring—

(1) any merchandise of a manufacturer if—

(A) merchandise of such manufacturer within the same product monitoring caterory as the merchandise to be monitored has been the subject of at least 2 affirmative dumping determinations made during the preceding 10-year period.

(B) an eligible domestic entity submits to the administering authority a petition requesting the monitoring, and

(C) the administering authority finds that there is an indication that sales of the merchandise to be monitored may be occurring in the United States at less than fair value, and

(2) all merchandise of a manufacturer within a product monitoring category if merchandise of such manufacturer within that product monitoring category has been the subject of at least 3 affirmative dumping determinations made during the preceding 10-year period.

(c) INVESTIGATIONS IN RESPONSE TO MONITORING.—

(1) IN GENERAL.—If the monitoring conducted under subsection (b) provides an indication that sales of the merchandise may be occurring in the United States at less than fair value, the administering authority shall initiate an investigation of such merchandise under section 732(a).

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to merchandise if the industry requests that no investigation of such merchandise be initiated under section 732(a).

(3) NO EXTENSIONS.—Sections 733(c) and 735(a)(2) shall not apply in any investigation initiated by reason of paragraph (1) unless all domestic parties submit to the administering authority written notice of their consent to the application of such sections in the investigation.

(d) TERMINATION OF MONITORING.—Any monitoring of merchandise conducted by reason of subsection (b) shall terminate on the date that is 10 years after the date on which such monitoring is initiated under subsection (b).

(e) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE DOMESTIC ENTITY.—The term "eligible domestic entity" means a manufacturer or producer in the United States, or a certified union or recognized union or group of workers which is representative of an industry in the United States, that manufactures or produces merchandise that is—

(A) like or directly competitive with other merchandise that is the subject of an affirmative dumping determination, or

(B) is similar enough to such other merchandise as to be considered for inclusion with such merchandise in a product monitoring category established under this section.

(2) AFFIRMATIVE DUMPING DETERMINATION.—The term "affirmative dumping determination" means—

(A) any affirmative final determination made by the administering authority under section 735(a) that results in the issuance of an antidumping duty order under section 736 which requires the deposit of estimated anti-dumping duties imposed at a rate of at least 10 percent ad valorem, and

(B) any affirmative preliminary determination that—

(i) is made by the administering authority under section 733(b) in the course of an investigation for which no final determination is made under section 735 by reason of a suspension of the investigation under section 734, and

(ii) includes a determination that the estimated average amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise is at least 10 percent ad valorem.

(3) SUBJECT OF AFFIRMATIVE DUMPING DETERMINATION.—

(A) IN GENERAL.—Merchandise of a manufacturer shall be treated as being the subject of an affirmative dumping determination only if—

(i) the administering authority—

(I) makes a separate determination of the amount by which the foreign market value of the merchandise of the manufacturer exceeds the United States price of the merchandise of the manufacturer, and

(II) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the affirmative dumping determination, and

(B) EXCLUSION.—Merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if—

(i) the merchandise of the manufacturer is part of a group of merchandise to which the administering authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)(I)) an amount determined to be the amount by which the foreign market value of the merchandise in such group exceeds the United States price of the merchandise in such group, and

(ii) the merchandise and the manufacturer are not specified by name in the affirmative dumping determination or in any antidumping duty order issued as a result of such affirmative dumping determination.

(f) TRANSITIONAL RULES.—

(1) For purposes of this section, all affirmative dumping determinations described in subsection (e)(2)(A) that were made after December 31, 1980, and before the date of enactment of the Omnibus Trade Act of 1987, and all affirmative dumping determinations described in subsection (e)(2)(B) that were made after December 31, 1984, and before the date of enactment of such Act, with respect to merchandise of the same manufacturer shall be treated as one affirmative dumping determination which was made—

(A) on the date on which the latest of such determinations was made, and

(B) with respect to merchandise of such manufacturer in each product monitoring category in which the merchandise that is the subject of each of such determinations is classified.

(2) No affirmative dumping determination that—

(A) is described in subsection (e)(2)(A) and was made before January 1, 1981, or

(B) is described in subsection (e)(2)(B) and was made before January 1, 1985,

may be taken into account under this section.

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

*　*　*　*　*　*　*

(4) INDUSTRY.—

*　*　*　*　*　*　*

(E) INDUSTRY PRODUCING PROCESSED AGRICULTURAL PRODUCTS.—

(i) IN GENERAL.—In an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) PROCESSING.—For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) RELEVANT ECONOMIC FACTORS.—For purposes of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall—

(I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) RAW AGRICULTURAL PRODUCT.— For purposes of this subparagraph, the term "raw agricultural product" means any farm or fishery product.

[(5) SUBSIDY.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

[(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

[(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

[(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

[(ii) The provision of goods or services at preferential rates.

[(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.]

(5) SUBSIDY.—

(A) IN GENERAL.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303, and includes, but is not limited to, the fo-lowing:

(i) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture,

production, or export of any class or kind of merchandise:

(I) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(II) The provision of goods or services at preferential rates.

(III) The grant of funds, or forgiveness of debt, to cover operating losses sustained by a specific industry.

(IV) The assumption of any costs or expense of manufacture, production, and distribution.

(B) SPECIAL RULE.—In applying subparagraph (A), the administering authority, in each investigation, shall determine whether the bounty, grant, or subsidy in law or in fact is provided to a specific enterprise or industry, or group of enterprises or industries. Nominal general availability, under the terms of the law, regulation, program, or rule establishing a bounty, grant, or subsidy, of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.

* * * * * * *

(7) MATERIAL INJURY.—

* * * * * * *

[(B) VOLUME AND CONSEQUENT IMPACT.—In making its determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission shall consider, among other factors—

[(i) the volume of imports of the merchandise which is the subject of the investigation,

[(ii) the effect of imports of that merchandise on prices in the United States for like products, and

[(iii) the impact of imports of such merchandise on domestic producers of like products.]

(B) VOLUME AND CONSEQUENT IMPACT.—In making determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission, in each case—

(i) shall consider—

(I) the volume of imports of the merchandise which is the subject of the investigation,

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 705(d) or 735(d), as the case may be, the Commission shall explain its analy-

sis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

[(C) EVALUATION OF VOLUME AND OF PRICE EFFECTS—] *(C) EVALUATION OF RELEVANT FACTORS.*—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant [price undercutting] *price underselling* by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

[(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

[(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

[(II) factors affecting domestic prices, and

[(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.]

(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(iii), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

"(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

"(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(IV) existing efforts of the domestic industry to develop the technology necessary to produce a type of product derived or developed from an earlier type of product.

The Commission shall evaluate all relevant economic factors described in this clause within the context of *the business cycle and conditions of competition that are distinctive to the affected industry.*

* * * * * * *

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors—

* * * * * * *

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, [and]

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation[.]*;*

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both); and

(X) existing efforts of the domestic industry to develop the technology necessary to produce a type of product derived or developed from an earlier type of product.

(iii) EFFECT OF DUMPING IN THIRD-COUNTRY MARKETS.—

(I) IN GENERAL.—In investigations under subtitle B, the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer. exporter, or United States importer concerning this issue.

(II) GATT MEMBER MARKET.—For purposes of this clause, the term "GATT member market" means the market of any country which is a signatory to The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(III) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities shall be treated as a foreign country.

* * * * * * *

(9) INTERESTED PARTY.—The term "interested party" means—

* * * * * * *

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States, **[**and**]**

(F) an association, a majority of whose members in composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product**[**.**]**; and

(G) in any investigation under this title involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

(i) processors, or

(ii) both processors and producers or growers.

* * * * * * *

(18) NONMARKET ECONOMY COUNTRY.—

(A) IN GENERAL.—The term "nonmarket economy country" means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries,

(ii) the extent to which wage rates in the foreign country are determined by free bargaining bertween labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country, and

(iv) such other factors as the administering authority considers appropriate.

(C) Determination in effect.—

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

(D) DETERMINATIONS NOT IN ISSUE.—Any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review, or otherwise contested, in any investigation conducted under subtitle B.

(E) Collection of information.—Upon request by the administering authority, the Commissioner of Customs and the Commission shall provide the administering authority a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of Customs or the Commission that the administering authority considers relevant to proceedings involving merchandise from nonmarket economy countries. The administering authority shall protect proprietary information obtained under this section from public disclosure in accordance with section 777.

(19) ELIGIBLE MARKET ECONOMY COUNTRY.—The term "eligible market economy country" means any foreign country which—

(A) is not a nonmarket economy country,

(B) produces and exports to the United States merchandise comparable to the merchandise under investigation, and

(C) is determined by the administering authority to be appropriate for use in calculating foreign market value, taking into account factors including, but not limited to—

(i) whether the comparable merchandise from that country is subject to an antidumping or countervailing duty order,

(ii) whether a suspension agreement under section 734 or 704 is in effect for such merchandise.

(iii) whether any international agreement which affects prices or the level of imports is in effect for such merchandise, or

(iv) whether the level of imports is small.

(20) APPLICATION TO GOVERNMENTAL IMPORTATIONS.—

(A) IN GENERAL.—Except as otherwise provided by this paragraph, merchandise imported by, or for the use of, a department or agency of the United States Government (including merchandise provided for under schedule 8 of the Tariff Schedules of the United States) is subject to the imposition of countervailing duties or antidumping duties under this title or section 303.

(B) EXCEPTIONS.—Merchandise imported by, or for the use of, a department or agency of the United States Government shall not be subject to the imposition of countervailing duties or antidumping duties under this title if—

(i) the merchandise is imported by, or for the use of, the Department of Defense and is subject to any Department of Defense Memorandum of Understanding which existed on or before May 6, 1987, or

(ii) the market in the United States for the class or kind of the merchandise subject to such duties is nor-

mally limited to governments, or agencies or instrumentalities of governments.

SEC. 773. FOREIGN MARKET VALUE.

* * * * * * *

[(c) STATE-CONTROLLED ECONOMIES.—If available information indicates to the administering authority that the economy of the country from which the merchandise is exported is State-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a) of this section, the administering authority shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

[(1) the prices, determined in accordance with subsection (a) of this section, at which such or similar merchandise of a non-State-controlled-economy country or countries is sold either—

[(A) for consumption in the home market of that country or countries, or

[(B) to other countries, including the United States; or

[(2) the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries as determined under subsection (e).]

(c) NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—If—

(A) the merchandise under investigation is exported from a nonmarket economy country, and

(B) the administering authority finds that the information submitted by such country does not permit the foreign market value of the merchandise to be accurately determined under subsection (a),

the administering authority shall determine the foreign market value of the merchandise on the basis of the trade-weighted average price at which comparable merchandise, produced in the eligible market economy country accounting for the largest volume of such comparable merchandise entered, or withdrawn from warehouse, for consumption in the United States, is sold at arms length in the United States during the most recent period for which sufficient information is available.

(2) NO ELIGIBLE MARKET ECONOMY COUNTRY.—If the administering authority determines that there is no eligible market economy country, the foreign market value of the merchandise shall be the contructed value, determined in accordance with subsection (e), of comparable merchandise in any country other than a nonmarket economy country.

(3) SALES AT LESS THAN FAIR VALUE BY THE ELIGIBLE MARKET ECONOMY COUNTRY.—

(A) IN GENERAL.—If—

(i) the conditions described in subparagraphs (A) and (B) of paragraph (1) apply with respect to the merchandise under investigation, and

(ii) the administering authority—

(I) determines that the comparable merchandise produced in the eligible market economy country described in paragraph (1) is subject to an antidumping duty order, or

(II) has reason to believe that sales in the United States of comparable merchandise produced in the eligible market economy country described in paragraph (1) are being made at less than fair value,

the foreign market value of the merchandise shall be determined from the factors of production incurred in producing the merchandise which shall be valued from the best available evidence in a market economy or economies considered to be appropriate by the administering authority and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses, as required by subsection (e).

(B) Actions on allegations.—If the petitioner or any interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(a) alleges, in any investigation in which the conditions described in subparagraphs (A) and (B) of paragraph (1) apply, that comparable merchandise produced in the eligible market economy country described in paragraph (1) is being sold in the United States at less than fair value, the administering authority shall make a determination of whether there is reason to believe such comparable merchandise is being sold in the United States at less than fair value.

"(C) Factors of production.—For purposes of subparagraph (A), the factors of production incurred in producing merchandise includes, but is not limited to—

(i) hours of labor required,

(ii) quantities of raw materials employed,

(iii) amounts of energy and other utilities consumed, and

(iv) representative capital cost, including depreciation.

SEC. 776. VERIFICATION OF INFORMATION

(a) Certification of Submissions.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

[(a) General rule.—] *(b) Verification.*—The administering authority shall verify all information relied upon in making—

* * * * * * *

[(b)] *(c)* Determinations To Be Made on Best Information Available.—In making their determinations under this title, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

SEC. 777. ACCESS TO INFORMATION.

* * * * * * *

(c) LIMITED DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

[(A) IN GENERAL.—Upon receipt of an application, which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).]

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested), which describes with particularity the information requested and sets forth the reasons for the request—

(i) the administering authority may make proprietary information submitted by any other party to the investigation available under a protective order described in subparagraph (B), and

(ii) the Commission shall make proprietary information submitted by any person in connection with an investigation available under a protective order described in subparagraph (B).

* * * * * * *

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority *or the Commission* denies a request for information under paragraph (1), [or the Commission denies a request for confidential information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product,] then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

* * * * * * *

(7) MATERIALS INJURY.—

(A) * * *

[(B) VOLUME AND CONSEQUENT IMPACT.—In making its determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission shall consider, among other factors—

[(i) the volume of imports of the merchandise which is the subject of the investigation,

[(ii) the effect of imports of that merchandise on prices in the United States for like products, and

[(iii) the impact of imports of such merchandise on domestic producers of like products.]

(B) VOLUME AND CONSEQUENT IMPACT.—In making determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission, in each case—

(i) shall consider—

(I) the volume of imports of the merchandise which is the subject of the investigation,

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 705(d) or 735(d), as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) EVALUATION OF [VOLUME AND OF PRICE EFFECTS.] RELEVANT FACTORS.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms of relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price [undercutting] *underselling* by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

[(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—]

(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(iii), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the

industry in the United States, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity.

(II) factors affecting domestic prices.

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(IV) existing efforts of the domestic industry to develop the technology necessary to produce a type of product derived or developed from an earlier type of product.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

Subtitle D—General Provisions

* * * * * * *

SEC. 780. ACTIONS TO PREVENT CIRCUMVENTION AND DIVERSION.

(a) DOWNSTREAM PRODUCT MONITORING.—

(1) PETITION REQUESTING MONITORING.—

(A) IN GENERAL.—A domestic producer of an article that is like a component part or a downstream product may petition the administering authority to designate a downstream product for monitoring under paragraph (2). The petition shall specify—

(i) the downstream product,

(ii) the component product incorporated into such downstream product, and

(iii) the reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

(B) DETERMINATION REGARDING PETITION.—Within 14 days after receiving a petition submitted under subparagraph (A), the administering authority shall determine—

(i) whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with repect to the component part, and

(ii) whether—

(I) the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement (within the meaning of section 804 of the Trade and Tariff Act of 1984),

(II) merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of investigations supsended under section 704 or 734 or

countervailing or antidumping duty orders issued under this title or section 303, or

(III) merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least 2 investigations suspended under section 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303.

(C) FACTORS TO TAKE INTO ACCOUNT.—In making a determination under subparagraph (B)(i), the administering authority may, if appropriate, take into account such factors as—

(i) the value of component part in relation to the value of the downstream product;

(ii) the extent to which the component part has been substantially transformed as result of its incorporation into the downstream product; and

(iii) the relationship between the producers of component parts and producers of downstream products.

(D) PUBLICATION OF DETERMINATION.—The administering authority shall publish in the Federal Register notice of each determination made under subparagraph (B) and, if the determination made under subparagraph (B)(i) and a determination made under any subclause of subparagraph (B)(ii) are affirmative, shall transmit a copy of such determinations and the petition to the Commission.

(E) DETERMINATIONS NOT SUBJECT TO JUDICIAL REVIEW.—Any determination made by the administering authority under subparagraph (B) shall not be subject to judicial review.

(2) MONITORING BY THE COMMISSION.—

(A) IN GENERAL.—If the determination made under paragraph (1)(B)(i) and a determination made under any subclause of paragraph (1)(B)(ii) with respect to a petition are affirmative, the Commission shall immediately commence monitoring of trade in the downstream product that is the subject of the determination made under paragraph (1)(B)(i). If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in the product sector into which the downstream product is classified.

(B) REPORTS.—The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses conducted under subparagraph (A). The Commission shall make the reports available to the public.

(3) ACTION ON BASIS OF MONITORING REPORTS.—The administering authority shall review the information in the reports submitted by the Commission under paragraph (2)(B) and shall—

(A) consider the information in determining whether to initiate an investigation under section 702(a) or 732(a) regarding any downstream product, and

(B) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

(4) DEFINITIONS.—For purposes of this subsection—

(A) The term "component part" means any imported article that—

(i) during the 5-year period ending on the date on which the petition is filed under paragraph (1), has been subject to—

(I) a countervailing or antidumping duty order issued under this title or section 303 that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or

(II) an agreement entered into under section 704 or 734 after a preliminary affirmative determination under section 703(b) or 733(b)(1) was made by the administering authority which included a determination that the estimated net subsidy was at least 15 percent ad valorem or that the estimated average amount by which the foreign market value exceeded the United States price was at least 15 percent ad valorem, and

(ii) because of its inherent characteristics, is routinely used as a major part, component, assembly, subassembly, or material in a downstream product.

(B) The term "downstream product" means any manufactured article—

(i) which is imported into the United States, and

(ii) into which is incorporated any component part.

(b) PREVENTION OF CIRCUMVENTION AND DIVERSION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.—

(1) MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES.—

(A) IN GENERAL.—If—

(i) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(I) an antidumping duty order issued under section 736,

(II) a finding issued under the Antidumping Act, 1921, or

(III) a countervailing duty order issued under section 706 or section 303,

(ii) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies, and

(iii) the difference between the value of such merchandise sold in the United States and the value of the imported parts and components referred to in clause (ii) is small,

the administering authority may include within the scope of such order or finding the imported parts or components referred to in clause (ii) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

(B) FACTORS TO CONSIDER.—In determining whether to include parts or components in a countervailing or antidumping duty order or finding under subparagraph (A), the administering authority shall take into account such factors as—

(i) the pattern of trade,

(ii) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in subparagraph (A) applies, and

(iii) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order or finding.

(2) MERCHANDISE COMPLETED OR ASSEMBLED IN OTHER FOREIGN COUNTRIES.—

(A) IN GENERAL.—If—

(i) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

(I) an antidumping duty order issued under section 736,

(II) a finding issued under the Antidumping Act, 1921, or

(III) a countervailing duty order issued under section 706 or section 303,

(ii) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(I) is subject to such order or finding, or

(II) is produced in the foreign country with respect to which such order or finding applies,

(iii) the difference between the value of such imported merchandise and the value of the merchandise described in clause (ii) is small, and

(iv) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

the administering authority may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(B) FACTORS TO CONSIDER.—In determining whether to include merchandise assembled or completed in a foreign country in a countervailing or antidumping duty order or finding under subparagraph (A), the administering authority shall take into account such factors as—

(i) the pattern of trade,

(ii) whether the manufacturer or exporter of the merchandise described in subparagraph (A)(ii) is related to the person who uses the merchandise described in subparagraph (A)(ii) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

(iii) whether imports into the foreign country of the merchandise described in subparagraph (A)(ii) have increased after the issuance of such order or finding.

(3) MINOR ALTERATIONS OF MERCHANDISE.—

(A) IN GENERAL.—The class or kind of merchandise subject to—

(i) investigation under this title,

(ii) an antidumping duty order issued under section 736,

(iii) a finding issued under the Antidumping Act, 1921, or

(iv) a countervailing duty order issued under section 703 or section 303,

shall include articles altered in form or appearance in minor respects, whether or not included in the same tariff classification.

(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

TRADE AGREEMENTS ACT OF 1979 AS AMENDED

*   *   *   *   *   *   *

SEC. 1102. AUCTION OF IMPORT LICENSES.

*   *   *   *   *   *   *

(b) DEFINITION OF IMPORT LICENSE.— For purposes of this section, the term "import license" means any documentation used to administer a quantitative restriction imposed or modified after the date of enactment of this Act under—

(1) section 125, [203] *204* , 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436).

*   *   *   *   *   *   *

CARIBBEAN BASIN ECONOMIC RECOVERY ACT, AS AMENDED

*   *   *   *   *   *   *

SEC. 213. ELIGIBLE ARTICLES.

*   *   *   *   *   *   *

(e)(1) The president may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article is such action is [proclaimed pursuant to section 203] *provided under chapter 1 of* *title II* of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the International Trade Commission to the President under section 201(d)(1) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of [subsections (a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No proclamation which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be [made under subsections (a) and (c) of section 203] *issued under chapter 1 of title II* of the Trade Act of 1974 unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974, determines in the course of its investigation under section 201(b) of such Act that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.

(5)(A) Any proclamation issued [pursuant to section 203] *under chapter 1 of title II* of the Trade Act of 1974 that is in effect when duty-free treatment pursuant to section 101 of this title is proclaimed shall remain in effect until modified or terminated.

(B) If any article is subject to import relief at the time duty-free treatment is proclaimed pursuant to section 211, the President may reduce or terminate the application of such import relief to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of [subsections (h) and (i) of section 203] *sections 203(b)(3)(E) or 205(c)* of the Trade Act of 1974.

* * * * * * *

(f)(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

* * * * * * *

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the proclamation of import relief pursuant to section [202(a)(1)] *204* of the Trade Act of 1974,

(B) on the day the President makes a determination pursuant to section [203(b)(2)] *204(a)* of such Act not to impose import relief.

* * * * * * *

INTERNATIONAL COFFEE AGREEMENT ACT OF 1980, AS AMENDED

IMPORTATION OF COFFEE UNDER INTERNATIONAL COFFEE AGREEMENT 1976; PRESIDENTIAL POWERS AND DUTIES

SEC. 2. On and after the entry into force of the International Coffee Agreement, 1983, and before October 1, [1986] *1989,* the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transportation or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate of origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement;

* * * * * * *

FOREIGN TRADE ZONES ACT OF JUNE 18, 1934, AS AMENDED

* * * * * * *

SEC. 3. ADMISSION OF FOREIGN MERCHANDISE; TREATMENT; SHIPMENT TO CUSTOMS TERRITORY; APPRAISAL; RESHIPMENT TO ZONE.

* * * * * * *

(b) The exemption from the customs laws of the United States provided under subsection (a) shall not be available before [June 30, 1986] *January 1, 1991,* to bicycle component parts unless such parts are reexported from the United States, whether in the original package, as components of a completely assembled bicycle, or otherwise.

* * * * * * *

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

* * * * * * *

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

* * * * * * *

[(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph

(9)) that is formally entered, or withdrawn from warehouse for consumption, during any fiscal year occurring after September 30, 1987; a fee in an amount equal to the lesser of—

[(A) 0.17 percent ad valorem, or

[(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of revenue during the fiscal year equal to—

[(i) the total amount authorized to be appropriated for such fiscal year to the United States Customs Service for salaries and expenses incurred in conducting commercial operations during such fiscal year, reduced by

[(ii) the excess, if any, of—

[(I) the total amount authorized to be appropriated for such salaries and expenses for such fiscal year, over

[(II) the total amount actually appropriated for such salaries and expenses for such fiscal year;

except that if appropriations are not authorized for a fiscal year, the fee imposed under this paragraph with respect to that year shall be in an amount equal to 0.17 percent ad valorem.]

(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse, for consumption during any fiscal year beginning after September 30, 1987, a fee at a rate equal to the lesser of—

(A) 0.17 percent ad valorem, or

(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of receipts during the fiscal year equal to the amount of the dollar limitation authorized under section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 on the total amount of payments that may be made under subsection (f)(2)(A) of this section during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), reduced by the sum of—

(i) the excess, if any, of—

(I) the amount of such limitation for the fiscal year, over

(II) the amount of the dollar limitation imposed by any law making appropriations for the fiscal year on the total amount of payments which may be made under subsection (f)(2)(A) during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), plus

(ii) the amount of an estimate made by the Secretary of the Treasury of the amount of funds that—

(I) will be in the Customs User Fee Account at the beginning of the fiscal year, and

(II) will not be used to make payments described in subsection (f)(2)(C) of this section, plus

(iii) the amount of an estimate made by the Secretary of the Treasury of the amount of receipts from fees im-

posed by any paragraph of this subsection other than this paragraph that—

(I) will be deposited in to the Customs User Fee Account during the fiscal year, and

(II) will not be used to make payments described in subsection (f)(2)(C) of this section.

If no authorization is provided under section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 for the amount of the dollar limitation that may be imposed on the total amount of payments under subsection (f)(2)(A) of this section during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), the rate of the fee imposed under this paragraph for the fiscal year shall be 0.17 percent ad valorem.

* * * * * * *

(b) LIMITATIONS ON FEES.—

(1) No fee may be charged under subsection (a) of this section for customs services provided in connection with—

* * * * * * *

(8)(A) The fee charged under subsection (a)(9) or (10) of this section with respect to the processing of merchandise shall—

* * * * * * *

(B)(i) By no later than the date that is 5 days after the date [on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations] *of enactment of any law making appropriations for a fiscal year that provides a dollar limitation on the total amount of payments that may be made under subsection (f)(2)(A) during the fiscal year (other than payments described in subsection (f)(2)(C),* the Secretary of the Treasury shall determine the ad valorem rate of the fee charged under subsection (a)(10) of this section and shall publish the determination in the Federal Register. Such ad valorem rate shall apply with respect to services provided for the processing of entries, and withdrawals from warehouse, for consumption made after the date that is 60 days after the date of such determination.

(ii) No determination is required under clause (i) with respect to [an appropriation to the United States Customs Service if the funds appropriated] *a law described in clause (i) if the funds appropriated by such law* are available for less than 60 days.

(f) DISPOSITION OF FEES.—(1) Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), all of the fees collected under subsection (a) shall be deposited as offsetting receipts in a separate account within the general fund of the Treasury of the United States. Such account shall be known as the "Customs User Fee Account".

[(2)(A) The Secretary of the Treasury shall refund out of the Customs User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury.

[(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Secretary of the Treasury of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amounts required to be refunded under subparagraph (A).]

(2)(A) The Secretary of the Treasury is authorized and directed to pay out of the Customs User Fee Account all salaries and expenses of the United States Customs Service that are incurred in conducting commercial operations.

(B) The authority to make payments under subparagrph (A) during any fiscal year (other than payments described in subparagraph (C)) shall be subject to such dollar limitations as are provided in any law making appropriations for such fiscal year. Payments may be made under subparagraph (A) during a fiscal year only if a dollar limitation on the total amount of payments that may be made under subpargraph (A) during such fiscal year (other than payments described in subparagraph (C)) is provided by a law making appropriations for such fiscal year.

(C) Any dollar limitation described in subparagraph (B) shall not apply to any payments made out of the Customs User Fee Account for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury, and such payments shall not be taken into account in applying such a limitation.

(D) All funds in the Customs User Fee Account shall only be available for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.

[(3) Except as provided in paragraph (2), all funds in the Customs User Fee Account shall only be available, to the extent provided for in appropriation Acts, for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.]

[(4)] *(3)* At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) of this section should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

*　*　*　*　*　*　*

TRADE EXPANSION ACT OF 1962, AS AMENDED

* * * * * * *

SEC. 232. SAFEGUARDING NATIONAL SECURITY.

* * * * * * *

(b) [Upon request] *(1) Upon request* of the head of any department or agency, upon application of an interested party, or upon his own motion, the [Secretary of the Treasury] *Secretary of the Commerce* (hereinafter referred to as the "Secretary") Shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense [, the Secretary of Commerce,] and other appropriate officers of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President [within one year after receiving an application from an interested party or otherwise beginning] *by no later than the date that is 180 days after the date on which the Secretary receives a request for an investigation under this section or on which the investigation otherwise begins* an investigation under this subsection. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

(2)(A) The Secretary shall immediately notify the Secretary of Defense of any investigation initiated under paragraph (1) with respect to imports of an article. Upon receiving such notice, the Secretary of Defense shall conduct a separate defense needs assessment with respect to such article.

(B) By no later than the date that is 3 months after the date on which the investigation under paragraph (1) of imports of an article is initiated, the Secretary of Defense shall complete the defense needs assessment conducted under subparagraph (A) with respect to such article and submit to the Secretary a report on the assessment. Such report shall be submitted by the Secretary to the President with (and be considered a part of) the report that the Secretary is required to submit to the President under paragraph (1).

(3)(A) The report submitted by the Secretary under paragraph (1) shall include a written statement by the Secretary of Defense expressing concurrence or disagreement with the findings and recom-

mendations of the Secretary contained in such report and the reasons for such concurrence or disagreement.

(B) The report submitted by the Secretary under paragraph (1), or any portion of such report (including the report submitted by the Secretary of Defense under paragraph (2)(B), may be classified only if public disclosure of such report, or of such portion of such report, would clearly be detrimental to the security of the United States.

(C) Any portion of the report submitted under paragraph (1) which—

(i) Is not classified in accordance with subparagraph (B), and

(ii) is not proprietary information, shall be published in the Federal Register.

(4)(A) The President shall take action, or refuse to take action, under paragraph (1) with respect to any report submitted under paragraph (1) by no later than the date that is 90 days after the date on which such report is submitted to the President.

(B) The President shall make a written statement of the reasons why the President has decided to take action, or refused to take action, under paragraph (1) with respect to each report submitted to the President under paragraph (1). Such statement shall be included in the report published under subsection (d).

(5)(A) The actions which the President may take under paragraph (1) include, but are not limited to, the negotiation, conclusion, and carrying out of any agreement, arrangement, or understanding which limits or restricts the importation into, or the exportation to, the United States of the article that threatens to impair national security.

(B) The President is authorized to request the Secretary of the Treasury to—

(i) carry out such actions as may be necessary or appropriate to ensure the attainment of the objectives of any agreement, arrangement, or understanding described in subparagraph (A) that is entered into under this section, and

(ii) enforce any quantitative limitation, restriction, and other terms contained in the agreement, arrangement, or understanding.

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, arrangement, or understanding.

(C) If—

"(i) the action taken by the President with respect to any report submitted to the President under paragraph (1) is the negotiation of an agreement described in subparagraph (A), and

(ii) either—

(I) no agreement described in subparagraph (A) is entered into before the date that is 270 days after the date on which the Secretary submitted such report to the President, or

(II) any agreement described in subparagraph (A) that has been entered into is not being carried out or is ineffective in eliminating the threat to the national security posed by imports of the article which is the subject of such report,

the President shall take such other actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten to impair the national security. The President shall publish in the Federal Register notice of any additional actions being taken under this section by reason of this subparagraph.

(D) If—

(i) clauses (i) and (ii) of subparagraph (C) apply, and

(ii) the President determines not to take any additional actions under this section,

the President shall publish in the Federal Register such determination and the reasons on which such determination is based.

* * * * * * *

(d) A report shall be made and published in the Federal Register upon the disposition of each request, application, or motion under subsection (b). The Secretary shall publish procedural regulations to give effect to the authority conferred on him by subsection (b).

* * * * * * *

SEC. 242. INTERAGENCY TRADE ORGANIZATION.

[(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this title and sections 201, 202, and 203 of the Trade Act of 1974. Such organization shall, in addition to the United States Trade Representative, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the orgainzation shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.

[(b) In assisting the President, the organization shall—

[(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

[(2) make recommendations to the President as to what action, if any, he should take on reports submitted to him by the United States International Trade Commission under section 201(d) of the Trade Act of 1974.

[(3) advise the President of the results of hearings held pursuant to section 302(b)(2) of the Trade act of 1974, and recommend appropriate action with respect thereto, and

[(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

[(c) The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the United States International Trade Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to section 302(b)(2) of the Trade act of 1974, and for the carrying out of other functions assigned to the organization pursuant to this section.]

SEC. 242. NATIONAL TRADE COUNCIL.

(a) ESTABLISHMENT.—There is hereby established in the Executive Office of the President a council to be known as the National Trade Council (hereafter referred to in this section as the "Council").

(b) MEMBERSHIP.—The Council shall be composed of—

(1) the President;

(2) the Vice President;

(3) the Secretary of State;

(4) the Secretary of the Treasury;

(5) the Secretary of Defense;

(6) the Secretary of Agriculture;

(7) the Secretary of Commerce;

(8) the Secretary of Labor; and

(9) the United States Trade Representative.

(c) PRESIDING OFFICER.—The President shall preside over meetings of the Council. In the President's absence, the United States Trade Representative shall preside over meetings of the Council.

(d) FUNCTIONS.—

(1) The Council shall advise the President with respect to the integration of national and international policies relating to trade so as to enable the President and the departments and agencies of the Federal Government to cooperate more effectively in matters involving international trade.

(2) In addition to performing such other functions as the President may direct, for the purposes of more effectively coordinating the policies and functions of the departments and agencies of the Federal Government relating to international trade and making recommendations to the President, the Council shall, subject to the direction of the President—

(A) assess and appraise the international trade policies (including commodity and direct investment matters) and international trade objectives of the United States,

(B) consider policies on matters of common interest to the departments and agencies of the Federal Government concerned with international trade,

(C) consider the relationship between the standard of living in the United States and the international trade policies of the United States, and

(D) evaluate the effects of the international trade policies and objectives of the United States on the national security.

(e) STAFF.—The United States Trade Representative shall provide such personnel as staff for the Council as are necessary to enable the Council to carry out the functions of the Council.

(f) CONSULTATION.—In carrying out the functions of the Council, each member of the Council shall consult with—

(1) committees established to advise the department, agency, or office of which such member is the head,

(2) advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), and

(3) other representatives of the private sector.

(g) Recommendations and Reports.—The Council shall, from time to time, make such recommendations and such reports to the President as the Council considers to be appropriate or as the President may request.

SEC. 351. GENERAL AUTHORITY

* * * * * * *

(c) Reduction, Termination, or Extension of Increase in, or Imposition of, Any Duty or Other Import Restriction.—

(1) Any increase in, or imposition of, any duty or other import restriction proclaimed pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951—

* * * * * * *

(B) unless extended under [section 203] *section 204* of this title, shall terminate not later than the close of the date which is 4 years (or, in the case of any such increase or imposition proclaimed pursuant to such section 7, 5 years) after the effective date of the initial proclamation or October 11, 1962, whichever date is the later.

(d) Review of Developments With Respect to Industries Concerned; Annual Report to President; Advice of Probable Economic Effect; Considerations; Investigations; Hearings.—

* * * * * * *

(2) Upon request of the President or upon its own motion, the United States International Trade Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the reduction or termination of the increase in, or imposition of, any duty or other import restriction pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951.

(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any import relief provided pursuant to this section or section 352 is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

* * * * * * *

FOREIGN ASSISTANCE ACT OF 1961

PART I

Chapter 1

* * * * * * *

Sec. 129. Protection of Intellectual Property Rights.—(a) The Congress finds that the adequate protection of intellectual property rights should be an important element to the commercial, market, and economic development of developing countries encouraged by this chapter.

(b)(1) The President is authorized to furnish assistance, after consultation with the Secretary of Commerce, on such terms and conditions as he may determine, for programs to aid less developed countries in developing and implementing adequate intellectual property laws.

(2) The Secretary of Commerce, acting through the Patent and Trademark Office and the United States Copyright Office, shall identify the technical assistance needs of less developed countries under this section.

(c) The assistance described in subsection (b) shall—

(1) help provide less developed countries with the resources necessary for the design, development, administration, implementation, and enforcement of a system of intellectual property laws;

(2) emphasize the creation of a capability within the developing countries to engage in indigenous research and development and to generate the technologies necessary for their economic and social development;

(3) help build intellectual property systems necessary for a domestic environment capable of supporting research and development; and

(4) coordinate bilateral scientific exchange programs with the public and private sector to help stimulate local research and development.

(d) Notwithstanding any other provision of this chapter, funds appropriated pursuant to this chapter shall be available to carry out the provisions of this section.

* * * * * * *

CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

* * * * * * *

SEC. 301. APPROPRIATIONS AUTHORIZATION.

(a) * * *

[(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

[(A) $749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

[(B) $80,999,000 is for the salaries and expenses of additional personnel to be used in carrying out drug enforcement activities; and

[(C) $171,050,000 is for the operation and maintanance of the air interdiction program of the Service, of which—

[(i) $93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and [(ii) $350,000 is for a feasibility and application study for a low-level radar, detection system in collaboration with the Los Alamos National Laboratory.

[(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

[(A) not less than 2,500 merchandise entries (including informal entries) were made; and

[(B) not less than $1,500,000 in customs revenues were assessed.]

(b)(1) There are authorized to be appropriated for fiscal year 1988, $476,211,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which—

(A) $118,020,000 is for the operation and maintenance of the air interdiction program of the United States Customs Service,

(B) $150,000 is for rents incurred in connection with the provision of customs services at places located outside the customs territory of the United States,

(C) $1,000,000 is for research and is authorized to be appropriated without fiscal year limitation so that the sum remains available until expended, and

(D) $10,000 is for official reception and representation expenses.

(2) There is authorized to be provided in any law making appropriations for fiscal year 1988, a limitation on the total amount of payments which may be made during such fiscal year under section 13031(f)(2)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (other than payments described in section 13031(f)(2)(C) of such Act) that shall not exceed $559,000,000.

(3) During fiscal year 1988, the Commissioner of Customs is authorized to—

(A) purchase not more than 500 motor vehicles for replacement of motor vehicles used by the United States Customs Service (including not more than 490 motor vehicles adapted for police activities) without regard to any general purchase price limitation imposed by any law other than this section,

(B) rent passenger motor vehicles, and

(C) purchase uniforms for the United States Customs Service without regard to any general purchase price limitation imposed by any law other than this section.

* * * * * * *

(d) No part of any sum that is appropriated under subsection (b) for fiscal years after September 30, 1984, *and no funds in the Customs User Fee Account,* may be used for administrative expenses to pay any employee of the United States Customs Service overtime pay in an amount exceeding $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service.

* * * * * * *

(f) [USE OF SAVINGS RESULTING FROM ADMINISTRATIVE CONSOLIDATIONS.—] If savings in salaries and expenses result from the consolidation of administrative functions within the Customs Service, the Commissioner of Customs shall apply those savings, to the extent they are not needed to meet emergency requirements of the Service, to strengthening the commercial operations of the Service by increasing the number of inspector, import specialist, patrol officer, and other line operational positions.

(g) [ALLOCATION OF RESOURCES.—] *(1)* The Commissioner of Customs shall ensure that existing levels of commercial services, including inspection and control, classification, and value, shall continue to be provided by Customs personnel assigned to the headquarters office of any customs district designated by statute before the date of enactment of this subsection. The number of such personnel assigned to any such district headquarters shall not be reduced through attrition or otherwise, and such personnel shall be afforded the opportunity to maintain their proficiency through training and workshops to the same extent provided to Customs personnel in any other district. Automation and other modernization equipment shall be made available, as needed on a timely basis, to such headquarters to the same extent as such equipment is made available to any other district headquarters.

(2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—

(A) result in any significant reduction in force of employees other than by means of attrition,

(B) result in any reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry,

(C) eliminate or relocate any office of the United States Customs Service,

(D) eliminate any port of entry, or

(E) significantly reduce the number of employees assigned to any office of the United States Customs Service or any port of entry.

* * * * * * *

TAX REFORM ACT OF 1986

* * * * * * *

SEC. 423. ETHYL ALCOHOL AND MIXTURES THEREOF FOR FUEL USE.

(a) IN GENERAL.—Except as provided in subsection (b), no ethyl alcohol or a mixture thereof may be considered—

* * * * * * *

(b) EXCEPTION.—

(1) Subject to the limitation in paragraph (2), subsection (a) shall not apply to ethyl alcohol that is imported into the United States during calendar years 1987 and 1988 and produced in—

* * * * * * *

(B) an azeotropic distillation facility—

(i) at least 50 percent of the total value of the equipment and components of which were—

*   *   *   *   *   *   *

(ii) substantially all of the equipment and components of which were, on or before January 1, 1986—

(I) located in the Unted States under the possession or control of such corporation,

(II) ready for shipment to, and installation in, a beneficiary country *or an insular possession of the United States*, and

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

*   *   *   *   *   *   *

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

*   *   *   *   *   *   *

*   *   *   *   *   *   *

§ 3518. Effect on existing laws and regulations.

*   *   *   *   *   *   *

(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Bubget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

(f) The provisions of this chapter shall not apply with respect to—

(1) economic and trade data described in section 603(b) of the Omnibus Trade Act of 1987 and any other economic or trade data which the National Trade Data Committee determines to include in the National Trade Data Bank established under section 603(b)(1) of such Act,

(2) any actions taken by the National Trade Data Committee under the authority of section 603 of such Act, and

(3) any actions taken by any officers or employees of the Federal Government in cooperating with requests made by the National Trade Data Committee for the purposes of carrying out the provisions of section 603 of such Act.

*   *   *   *   *   *   *

TARIFF SCHEDULES OF THE UNITED STATES

* * * * * * *

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS

* * * * * * *

Item	Articles	Rates of duty 1	Rates of duty Special	Rates of duty 2
	PART 3.—FISH AND SHELLFISH			
	* * * *	*	*	*
	Subpart C.—Fish in Airtight Containers			
	* * * *	*	*	*
	Fish, prepared or preserved in any manner, in oil, in airtight containers:			
[112.40	Anchovies	6% ad val.	Free (A,E,I)	30% ad val.]
	Anchovies:			
112.40	*If entered in any calendar year before 3,000 metric tons of anchovies have been entered under this item in such calendar year.*	*3% ad val.*	*Free (A,E,I)*	*30% ad val.*
112.41	*Other*	*6% ad val.*	*Free (A,E,I)*	*30% ad val.*
	* * * *	*	*	*
	PART 4.—DAIRY PRODUCTS; BIRDS' EGGS			
	* * * *	*	*	*
	Subpart C.—Cheese			
	* * * *	*	*	*
	Other cheeses, and substitutes for cheese:			
	Cheese made from sheep's milk:			
117.65	In original loaves and suitable for grating.	[9% ad val] *Free.*	Free (A,E,I)	35% ad val.
117.67	Pecorino, in original loaves, not suitable for grating.	[12% ad val.] *Free.*	Free (A,E,I)	35% ad val.
	* * * *	*	*	*
	PART 9.—EDIBLE NUTS AND FRUITS			
	* * * *	*	*	*
	Subpart B.—Edible Fruits			
	* * * *	*	*	*
	Oranges:			
[147.29	Mandarin, packed in airtight containers	0.2¢ per lb.	Free (A,E,I)	1¢ per lb.]
	Mandarin, packed in airtight containers:			
147.28	*Satsuma, if entered in any calendar year before 40,000 metric tons of Satsuma oranges have been entered under this item in such calendar year.*	*Free*	*Free (A,E,I)*	*1¢ per lb.*
147.29	*Other*	*0.2¢ per lb.*	*Free (A,E,I)*	*1¢ per lb.*
	Other:			
148.43	*In containers each holding not more than 0.3 gallon.*	*20¢ per gal.*	*Free (E)*	*20¢ per gal.*
[148.44	Other	20¢ per gal.	Free (E)	20¢ per gal.]
	In containers each holding more than 0.3 gallon:			
148.44	*If entered in any calendar year before 4,400 metric tons of olives have been entered under this item in such calendar year.*	*10¢ per gal.*	*Free (E)*	*20¢ per gal.*
148.45	*Other*	*20¢ per gal.*	*Free (E)*	*20¢ per gal.*
	* * * *	*	*	*
	Other:			
148.47	*If entered in any calendar year before 730 metric tons of olives have been entered under this item in such calendar year.*	*15¢ per gal.*	*Free (E)*	*30¢ per gal.*
[148.48	Other	30¢ per gal.	Free (E)	30¢ per gal.]

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty Special	Rates of duty 2
148.48	*Other*	*30¢ per gal.*	*Free (E)*	*30¢ per gal.*
148.50	Pitted [or stuffed]	30¢ per gal.	Free (E)	30¢ per gal.
	Stuffed:			
	In containers each holding not more than 0.3 gallon:			
	Place Packed:			
148.51	*If entered in any calendar year before 2,700 metric tons of olives have been entered under this item in such calendar year.*	*15¢ per gal*	*Free (E)*	*30¢ per gal.*
148.52	*Other*	*30¢ per gal.*	*Free (E)*	*30¢ per gal.*
148.53	*Other*	*30¢ per gal.*	*Free (E)*	*30¢ per gal.*
148.54	*In containers each holding more than 0.3 gallon*	*30¢ per gal.*	*Free (E)*	*30¢ per gal.*
	Dried:			
[148.52] *148.55*	Not ripe	[5¢ per lb.] *2.5¢ per lb.*	Free (A, E, I)	5¢ per lb.
[148.54] *148.56*	Ripe	2.5¢ per lb.	Free (A, E, I)	5¢ per lb.
[148.56] *148.57*	Otherwise prepared or preserved	5¢ per lb.	Free (E)	5¢ per lb.]
	Otherwise prepared or preserved:			
148.57	*If entered in any calendar year before 550 metric tons of olives have been entered under this item in such calendar year.*	*2.5¢ per lb.*	*Free (E)*	*5¢ per lb.*
148.58	*Other*	*5¢ per lb.*	*Free (E)*	*5¢ per lb.*

* * * * * * *

149.26	Dried, *salted, or not salted*	2¢ per lb.	Free (E, I)	2¢ per lb.
[149.28	Otherwise prepared or preserved	17.5% ad val	Free (E) 5.6% ad val. (I).	35% ad val].
	Otherwise prepared or preserved:			
149.30	*Plums, soaked in brine and dried*	*2¢ per lb.*	*Free (E) 5.6% ad val. (I).*	*2¢ per lb.*
149.31	*Other*	*17.5% ad val*	*Free (E) 5.6% ad val. (I).*	*35% ad val.*

* * * * * * *

PART 11.—COFFEE, TEA, MATE, AND SPICES

* * * * * * *

Subpart B.—Spices and Spice Seeds

* * * * * * *

	Capers:			
161.06	In immediate containers holding more than 7.5 pounds.	[16% ad val]. *8% ad val*	Free (A,E) *5.1% ad val (I)*	20% ad val.
161.08	Other	[16% ad val]. *8% ad val*	*Free (E) 5.1% ad val. (I).*	20% ad val.

* * * * * * *

161.71	Paprika, ground or not ground	[2¢] *1.35¢* per lb.	Free (A,E,I)	5¢ per lb.

* * * * * * *

PART 12.—BEVERAGES

* * * * * * *

Subpart C.—Fermented Alcoholic Beverages

* * * * * * *

167.15	Cider, fermented, whether still or sparkling	[3¢] *1.5¢ per* gal.	Free (A,E,I)	5¢ per gal.

* * * * * * *

PART 14—ANIMAL AND VEGETABLE OILS, FATS, AND GREASES

* * * * * * *

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty Special	Rates of duty 2
	Subpart B.—Vegetable Oils, Crude or Refined			
	* * * *	*	*	*
176.29	Other: Weighing with the immediate container under 40 pounds.	[3.8¢ per lb. on contents and container] *2.28¢ per lb. on contents and container.*	Free (A,E,I)	8¢ per lb. on contents and container.
176.30	Other	[2.6¢] *1.56¢* per lb.	Free (A,E,I)	6.5¢ per lb.
	* * * *	*	*	*
	PART 15.—OTHER ANIMAL AND VEGETABLE PRODUCTS			
	* * * *	*	*	*
	Subpart D.—Feathers, Downs, Bristles, and Hair			
	* * * *	*	*	*
186.20	Fur, not on the skin, prepared for hatters [use, and carroted furskins] *use.*	[15% ad val.] *Free.*	[Free (A,E) 4.8% ad val. (I)].	35% ad val.
186.22	*Carroted furskins*	*15% ad val*	*Free (A,E) 4.8% ad val. (I).*	*35% ad val.*
	* * * *	*	*	*

SCHEDULE 2.—WOOD AND PAPER: PRINTED MATTER

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	* * * *	*	*	*
	PART 5.—BOOKS, PAMPHLETS, AND OTHER PRINTED AND MANUSCRIPT MATERIAL			
	* * * *	*	*	*
	Printed catalogs relating chiefly to current offers for the sale of United States products:			
[270.45] *270.46*	Wholly or almost wholly of foreign authorship.	0.2% ad val	Free (A,D,E,I)	15% ad val.
[270.50] *270.48*	Other	0.4% ad val	Free (A,D,E,I)	25% ad val.
	* * * *	*	*	*
270.90	*Catalogs of films, recordings, or other visual and auditory material of an educational, scientific, or cultural character.*	*Free*		*Free*
	* * * *	*	*	*
	[Architectural, engineering, industrial, or commercial drawings and plans, whether originals or reproductions printed on sensitized materials by any photographic process:			
[273.45	Produced over 20 years before importations	Free		Free
[273.50	Produced not over 20 years before importation: Suitable as designs for use in the manufacture of floor coverings, textiles, wall coverings or wall paper.	1.4% ad val	Free (A,E,I)	20% ad val

SCHEDULE 2.—WOOD AND PAPER: PRINTED MATTER—Continued

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
[273.55	Other	0.5% ad val	Free (A,D,E,I)	25% ad val]
273.52	*Architectural, engineering, industrial, or commercial drawings and plans, whether originals or reproductions.*	*Free*		*Free*
*	* * *	*	*	*
	Photographs—*(including developed photographic film; photographic slides; transparencies; holograms for laser projection; and microfilm, microfiches and similar articles except those provided for in item 737.52),* engravings, etchings, lithographs, and wood cuts, and pictorial matter produced by relief or stencil printing process, all the foregoing, whether bound or not bound, and not specially provided for:			
274.50	Printed over 20 years at time of importation	Free		Free
	Printed not over 20 years at time of importation:			
274.55	*Loose illustrations, reproduction proofs or reproduction films used for the production of books.*	*Free*		*Free*
274.56	*Articles provided for in items 270.05, 270.10, 270.25, 270.55, 270.63, 270.70, and 273.60 in the form of microfilm, microfiches, and similar film media.*	*Free*		*Free*
	Lithographs on paper:			
274.60	Not over 0.020 inch in thickness	6¢ per lb	Free (A,E,I)	30¢ per lb.
	Posters			
	Other			
274.65	Over 0.02 inch in thickness	Free		8.75¢ per lb.+
274.70	Other	3.2% ad val	3.1% ad val (D).	25% ad val.
	Posters		Free (A,E,I)	
	Other			
*	* * *	*	*	*

SCHEDULE 3.—TEXTILE FIBERS AND TEXTILE PRODUCTS

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2

* * * * * * *

Schedule 3 headnotes:

* * * * * * *

5. (a) Except as otherwise provided in subsection (b) of this headnote, for the purposes of parts 5, 6, and 7 of this schedule and parts 1 [(except subpart A)] *(except subparts A and C)* 4, and 12 of schedule 7, in determining the classification of any article which is wholly or in part of a fabric coated or filled, or laminated, with non-transparent rubber of plastics (which fabric is provided for in part 4C of this schedule), the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the non-transparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric.
(b) Any fabric described in part 4C of this schedule shall be classified under part 4C whether or not also described elsewhere in the schedules.

* * * * * * *

PART 3.—WOVEN FABRICS

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	Subpart E.—Woven Fabrics of Man-Made Fibers			
*	* * *	*	*	*
[338.50	Other	17% ad val.	10.2% ad val. (I).	81% ad val.]

[Suitable for making typewriter and machine ribbon, containing yarns the average denier of which exceeds 25 but not 75, the total thread count (treating multiple (folded) or cabled yarns as single threads) of which per inch is not less than 150 warp and 100 filling and not more than 210 warp and 140 filling and in which the thread count of the warp does not exceed 60 percent of the total thread count of the warp and filling:
[Slit, with fast edges (614)
[Other (614)
[Other, wholly of continuous fibers (including continuous man-made filaments or strips):
[Woven fabrics obtained from high tenacity yarn of nylon, polyester, or viscose rayon:
[Of nylon or polyester (612)
[Of viscose rayon (610)
[Woven fabrics obtained from non-cellulosic man-made fiber strips (612)
[Other, weighing not over 5 oz. per square yard: Containing 85 percent or more by weight of rayon or acetate:
[Flat fabircs, not textured (610)
[Other (610)
Continuing 85 percent or more by weight of nylon:
[Flat fabrics, not textured (612)
[Other (612)
[Containing 85 percent or more by weight of polyester:
[Flat fabrics, not textured:
[Unbleached or bleached (612)
[Other (612)
[Flat fabrics, textured:
[Unbleached or bleached (612)
[Other (612)
[Other, not textured:
[Unbleached or bleached (612)
[Dyed (612)
[Of yarns of different colors (612)
[Printed (612)
[Other, textured:
[Unbleached or bleached (612)
[Dyed (612)
[Of yarns of different colors (612)
[Printed (612)
[Other (612)
[Other, weighing over 5 oz. per square yard:
[Containing 85 percent or more by weight of rayon or acetate (610)
[Containing 85 percent or more by weight of nylon:
[Flat fabrics, not textured (612)
[Other (612)
[Containing 85 percent or more by weight of polyester:
[Flat fabrics, not textured:
[Unbleached or bleached (612)
[Other (612)
[Flat fabrics, textured:
[Unbleached or bleached (612)
[Dyed (612)
[Of yarns of different colors (612)
[Printed (612)
[Other, not textured:
[Unbleached or bleached (612)

Item	Articles	Rates of Duty		
		1	Special	2

[Other (612)
[Other, textured:
[Unbleached or bleached (612)
[Other (612)
[Other (612)
[Other, combinations and mixtures of filament and spun yarns, weighing not more than 5 ounces per square yard, of polyester (except fabrics of polyester, mixed mainly or solely with cotton or mixed mainly or solely with rayon), measuring less than 30 inches in width or less than 30 inches between selvages, with over 120 warp yarns per inch, of a kind for use in the manufacture of neckties (614)
[Other, weighing not more than 5 oz. square yard:
[Cheesecloth:
[Wholly of spun yarns:
[Of rayon or acetate (611)
[Other (613)
[Other (614)
[Poplin or broadcloth:
[Wholly of spun yarns:
[Of rayon or acetate (611)
[Other:
[Of man-made fibers, mixed mainly or solely with cotton:
[Of yarns of different colors (613)
[Other (613)
[Other (613)
[Other (614)
[Printcloth:
[Wholly of spun yarns:
[Of rayon or acetate (611)
[Other:
[Of man-made fibers, mixed mainly or solely with cotton:
[Of yarns of different colors (613)
[Other (613)
[Other, containing 85 percent or more by weight of noncellulosic man-made fibers (613)
[Other (613)
[Other (614)
[Other, weighing not more than 5 oz. per square yard (con.):
[Sheeting:
[Wholly of spun yarns:
[Of rayon or acetate (611)
[Other:
[Of man-made fibers, mixed mainly or solely with cotton:
[Of yarns of different colors (613)
[Other (613)
[Other (613)
[Other (614)
[Batistes, lawns, or voiles:
[Wholly of spun yarns:
[Of rayon or acetate (611)
[Other:
[Of man-made fibers, mixed mainly or solely with cotton:
[Of yarns of different colors (613)
[Other (613)
[Other (613)
[Other (614)
[Sateens or twills:
[Wholly of spun yarns:
[Of rayon or acetate (611)
[Other:
[Twills (613)
[Sateen (613)
[Other (614)
[Oxford cloth:
[Wholly of spun yarns:
[Of rayon or acetate (611)
[Other:
[Of yarns of different colors (613)
[Other (613)

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	[Other (614)			
	[Other:			
	[Wholly of spun yarns:			
	[Of rayon or acetate (611)			
	[Other (613)			
	[Other (614)			
	[Other, weighing more than 5 oz. per square yard:			
	[Duck:			
	[Wholly of spun yarns:			
	[Of rayon or acetate (611)			
	[Other (613)			
	[Other (614)			
	[Poplin or broadcloth:			
	[Wholly of spun yarns:			
	[Of rayon or acetate (611)			
	[Other:			
	[Of man-made fibers, mixed mainly or soley with cotton (613)			
	[Other (613)			
	[Other (614)			
	[Sheeting:			
	[Wholly of spun yarns:			
	[Of rayon or acetate (611)			
	[Other:			
	[Of man-made fibers, mixed mainly or soley with cotton:			
	[Of yarns of different colors (613)			
	[Other (613)			
	[Other (613)			
	[Other (614)			
	[3-thread or 4-thread twill (including broken twill), warp faced, of yarns of different colors, the filling yarns of which are not of different colors:			
	[Wholly of spun yarns:			
	[Of rayon or acetate (611)			
	[Other (613)			
	[Other (614)			
	[Other twill (including cross twill):			
	[Wholly of spun yarns:			
	[Of rayon or acetate (611)			
	[Other:			
	[Of man-made fibers, mixed mainly or soley with cotton:			
	[Of yarns of different colors (613)			
	[Other (613)			
	[Other (613)			
	[Other (614)			
	[Sateens:			
	[Wholly of spun yarns:			
	[Of rayon or acetate (611)			
	[Other (613)			
	[Other (614)			
	[Other:			
	[Wholly of spun yarns:			
	[Of rayon or acetate (611)			
	[Other (613)			
	[Other (614)]			
338.60	*Containing 85% or more by weight of continuous man-made fibers.*	*2¢ per lb. + 17.9% ad val.*	*10.2% ad val. (I).*	*81% ad val.*
	Other:			
338.70	*Weighing not more than 5 oz. per square yard.*	*2¢ per lb. + 17.9% ad val.*	*10.2% ad val. (I).*	*81% ad val.*
338.80	*Other*	*2¢ per lb. + 17.9% ad val..*	*10.2% ad val. (I).*	*81% ad val.*

* * * * * * *

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	PART 1.—BENZENOID CHEMICALS AND PRODUCTS			
	* * * * * * *			
	Subpart B.—Industrial Organic Chemicals			
	* * * * * * *			
404.84	[2,5-Xylidine; and [3,4-Xylidine] *N1,N4,N4-Tris(2-hydroxyethyl)-2-nitro-1,4-phenylenediamine;* *N1,N4-Dimethyl-N1-(2-hydroxyethyl)-3-nitro-1,4-phenylenediamine;* *N1,N4-Dimethyl-N1-(2,3-dihydroxypropyl)-3-nitro-1,4-phenylenediamine;* *N1-(2-Hydroxyethyl)-3-nitro-1,4-phenylenediamine; and* *N1-(2-Hydroxyethyl)-2-nitro-1,4-phenylenediamine*	5.8% ad val	Free (E, I)	7¢ per 1lb 39.5% ad val.
	* * * * * * *			
	[L-Phenylalanine; and [Toluidine carbonate] *2-Nitro-5-[(2,3-dihydroxy) propoxy]-N-methylaniline;* *2-Nitro-5-(2-hydroxyethoxy)-N-methylaniline;* *4-[(2-Hydroxyethyl)amino]-3-nitrophenol;* *4-(2-Hydroxyethoxy)-1, 3-phenylenediamine dihydrochloride; and* *3-Methoxy-4-[(2-hydroxyethyl) amino] nitrobenzene*	5.8 ad val	Free (E, I)	7¢ per lb. + 39% ad val.

PART 10.—PETROLEUM, NATURAL GAS, AND PRODUCTS DERIVED THEREFROM

Part 10 headnotes:

1. Any product described in this part and also in part 1 of this schedule is classifiable in said part 1, except *motor fuel blending stocks*, fuel oils, motor fuel, and lubricating oils and greases, containing by weight not over 25 percent of any product described in said part 1. This part does not cover—
   (i) paraffin and other petroleum waxes (see part 13B of this schedule), or
   (ii) petroleum asphalts (see part 1J of schedule 5).
2. For the purposes of this part—
   (a) *"Reconstituted crude petroleum"* (items 475.05 and 475.10) is a product which is essentially the equivalent of crude petroleum and which is made by adding fuel oil, naphtha, or other petroleum fractions to crude or topped crude petroleum; [and]
   (b) *"Motor fuel"* (item 475.25) is any product derived primarily from petroleum, shale, or natural gas, whether or not containing additives, which is cheifly used as a fuel in internal-combustion or other engines[.]; *and*
   (c) "Motor fuel blending stock" (item 475.27) means any product (except naphthas provided for in item 475.35) derived primarily from petroleum, shale oil, or natural gas, whether or not containing additives, to be used for direct blending in the manufacture of motor fuel.

* * * * * * *

Item	Articles	1	Special	2
475.27	*Motor fuel blending stocks*	*1.25¢ per gal*		*2.5¢ per gal.*

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
475.30	Kerosene derived from petroleum, shale oil, or both (except motor [fuel)] *fuel or motor fuel blending stocks).*	0.25¢ per gal....	Free (I)............	0.5¢ per gal.

* * * * * * *

SCHEDULE 6.—METALS AND METAL PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2

PART 2.—METALS, THEIR ALLOYS, AND THEIR BASIC SHAPES AND FORMS

* * * * * * *

Subpart B.—Iron Steel

Subpart B headnotes:

1. * * *

* * * * * * *

3. *Forms and Condition of Iron or Steel.*—For the purposes of this subpart, the following terms have the meanings hereby assigned to them:
   (a) *Ingots:* Castings resulting from the solidification of molten steel and having a columnar form suitable for working by rolling or forging.
   (b) *Blooms and billets:* Semifinished products generally of rectangular or circular cross section, having a length several times greater than the maximum cross-sectional dimension, and, if rectangular, a width less than 4 times the thickness. A bloom is at least 36 square inches in cross-sectional area; a billet is less than 36 square inches but not less than 3 square inches in cross-sectional area.
   (c) *Slabs and sheet bars:* Semifinished products of rectangular cross section, having a width of at least 4 times the thickness. A slab is not less than 2 inches [and not over 6 inches] in thickness; a sheet bar is less than 2 inches in thickness.

* * * * * * *

PART 4.—MACHINERY AND MECHANICAL EQUIPMENT

* * * * * * *

Subpart E.—Textile Machines; Laundry and Dry-Cleaning Machines; Sewing Machines

1. For purposes of applying item 670.74 to parts of articles provided for under [item 912.04] *item 912.03 or 912.04*, any such part that is entered, or withdrawn from warehouse for consumption, during the effective period of [item 912.04] *item 912.03 or 912.04* shall be dutiable at the rate that would apply if that item had not been enacted.

* * * * * * *

PART 5.—ELECTRICAL MACHINERY AND EQUIPMENT

Part 5 headnotes:

* * * * * * *

Item	Articles	Rates of Duty 1	Special	2

3. The provisions of this headnote apply to "*television apparatus and parts thereof*" provided for in items 684.92 through 685.08, inclusive, of this part.
   (a) The term "*complete*", as used to describe *television receivers,* means a television receiver, fully [assembled,] *assembled in its cabinet,* whether or not packaged or tested for distribution to the ultimate purchaser.
   (b) For the purposes of items 684.98 and 685.00—
      (i) each subassembly that contains as a component, or is covered in the same entry with, one or more of the following television components, viz., tuner, channel selector assembly, antenna, deflection yoke, degaussing coil, picture tube mounting bracket, grounding assembly, parts necessary for fixing the picture tube or tuner in place, consumer operated controls, or speaker, shall be classified in item 684.98; and
      (ii) each subassembly shall be counted as a single unit, except that two or more different printed circuit boards or ceramic substrates covered by the same entry and designed for assembly into the same television models shall be counted as one unit.

4. Picture tubes imported in combination with, or incorporated into, other articles are to be classified in items 687.35 through 687.44, inclusive, unless they are—
   (i) incorporated into complete television receivers, as defined in headnote 3;
   (ii) incorporated into fully assembled units such as word processors, ADP terminals, or similar articles;
   (iii) put up in kits containing all the parts necessary for assembly into complete television receivers, as defined in headnote 3; or
   (iv) put up in kits containing all the parts necessary for assembly into fully assembled units such as word processors, ADP terminals, or similar articles.

[4.] *5.* For the purposes of this part "*transceivers*" are combinations of radio transmitting and receiving equipment in a common housing, employing common circuit components for both transmitting and receiving, and which are not capable of simultaneously receiving and transmitting.

[5.] *6.* For the purposes of the tariff schedules hand-held Citizens Band (CB) radio transceivers are Citizens Band (CB) radio transceivers designed for operation in the hand, having a permanently affixed antenna and an internal microphone, and not designed for use with an external power source.

[6.] *7.* For purposes of the tariff schedules, the term "*entertainment broadcast band receivers*" means those radio receivers designed principally to receive signals in the AM (550-1650 kHz) and FM (88-108 mHz) entertainment broadcast bands, whether or not capable of receiving signals on other bands (e.g., aviation, television, marine, public safety, industrial, and citizens band).

*　　*　　*　　*　　*　　*　　*

SCHEDULE 7.—SPECIFIED PRODUCTS: MISCELLANEOUS AND NONENUMERATED PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	PART 1.—FOOTWEAR: HEADWEAR AND HAT BRAIDS; GLOVES; LUGGAGE, HANDBAGS, BILLFOLDS, AND OTHER FLAT GOODS			

* * * * * * * *

Subpart C headnotes:

1. For the purposes of this subpart—
   (a) the term "gloves" includes all gloves and mittens designed for human wear, except boxing gloves, golf gloves, baseball gloves, and other gloves specially designed for use in sports;
   (b) the term "*glove linings*" includes all linings for gloves, as defined in (a) supra; [and]
   (c) the term "*with fourchettes*" includes gloves which, at a minimum, have fourchettes extending from fingertip to fingertip between each of the four fingers[.]*; and*
   (d) gloves which are—
   (i) without fourchettes, and
   (ii) constructed of a textile fabric coated, filled, impregnated, or laminated, in whole or in part, with rubber or plastics and cut-and-sewn,
   shall be regarded as gloves of textile materials.

* * * * * * * *

PART 2.—OPTICAL GOODS: SCIENTIFIC AND PROFESSIONAL INSTRUMENTS; WATCHES, CLOCKS, AND TIMING DEVICES; PHOTOGRAPHIC GOODS; MOTION PICTURES; RECORDINGS AND RECORDING MEDIA

* * * * * * * *

Subpart B.—Medical and Surgical Instruments and Apparatus; X-Ray Apparatus

* * * * * * * *

Item	Articles	1	Special	2
	Electro-medical apparatus *(other than extracorporeal shock wave lithotripters)*, and parts thereof:			
709.15	Electro-surgical apparatus, and parts thereof.	7.9% ad val	Free (A,E,I)	55% ad val.
	Therapeutic apparatus, including surgical support apparatus.			

* * * * * * * *

Subpart E.—Watches, Clocks and Timing Apparatus

Subpart E headnotes:

1\. * * *

* * * * * * * *

[4. *Special Marking Requirements:* Any movement, case, or dial provided for in this subpart, whether imported separately or attached to an article provided for in this subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, or stamping, as specified below.

[(a) Watch movements shall be marked on one or more of the bridges or top plates to show—

[(i) the name of the country of manufacture,

[(ii) the name of the manufacturer or purchaser,

SCHEDULE 7.—SPECIFIED PRODUCTS: MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of Duty 1	Special	2

[(iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings; and

[(iv) in words, the number and classes of adjustments, or, if unadjusted, the word "unadjusted".

[(b) Clock movements shall be marked on the most visible part of the front or back plate to show—

[(i) the name of the country of manufacture,

[(ii) the name of the manufacturer or purchaser, and

[(iii) the number of jewels, if any.

[(c) Watch cases shall be marked on the inside or outside of the back cover to show—

[(i) the name of the country of manufacturer, and

[(ii) the name of the manufacturer or purchaser.

[(d) Clock cases and other cases provided for in this subpart shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture; and

[(e) Dials shall be marked to show the name of the country of manufacture.]

4. Special Marking Requirements: Any movement or case provided for in this subpart, whether imported separately or attached to any article provided for in this subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, stamping, or mold-marking (either indented or raised), as specified below:

(a) Watch movements shall be marked on one or more of the bridges or top plates to show—

(i) the name of the country of manufacture;

(ii) the name of manufacturer or purchaser; and

(iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings.

(b) Clock movements shall be marked on the most visible part of the front or back plate to show—

(i) the name of the country of manufacture;

(ii) the name of the manufacturer or purchaser; and

(iii) the number of jewels, if any.

(c) Watch cases shall be marked on the inside our outside of the back case to show—

(i) the name of the country of manufacture; and

(ii) the name of the manufacturer or purchaser.

(d) Clock cases provided for in this subpart shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture.

* * * * * * * *

PART 5.—ARMS AND AMMUNITION; FISHING TACKLE; WHEEL GOODS; SPORTING GOODS, GAMES AND TOYS

* * * * * * * *

Subpart D.—Games and Sporting Goods

* * * * * * * *

Item	Articles	1	Special	2
735.18	Skeet targets	Free		20% ad val.

SCHEDULE 7.—SPECIFIED PRODUCTS: MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	Puzzles; games, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for.			
[735.20	Puzzles; game, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for.			
	Puzzles and parts thereof			
	Nets for games or sports, not specially provided for.			
	Raquetball rackets			
	Squash rackets			
	Skateboards and parts thereof:			
	Skateboards			
	Parts:			
	Decks			
	Other			
	Backpacking tents of textile material			
	Other:			
	Playground, gymnasium, gymnastic and other exercise equipment:			
	Exercise cycles			
	Exercise rowing machines			
	Other			
	Other]			
735.21	*Crossword puzzle books, whether or not in the form of microfilm, microfiches, or similar film media.*	*Free*		*Free*
735.24	*Other*	*5.52% ad val.*		*40% ad val.*

* * * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
737.52	Toy books *(whether or not in the form of microfilm, microfiches, or similar film media)*, including coloring books and books the only reading matter in which consists of letters, numerals, or descriptive words.			Free

* * * * * * * *

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISION

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	PART 2.—PERSONAL EXEMPTIONS			
	* * * * * * *			
	Subpart D.—Other Personal Exemptions			
[825.00	Artificial limbs and limb braces imported solely for the personal use of a specified person and not for sale otherwise than for the use of such person.	Free		Free
	Articles for the blind:			
[826.10	Books, music, and pamphlets, in raised print, used exclusively by or for them.	Free		Free
[826.20	Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.	Free		Free]
	* * * * * * *			
	PART 3.—GOVERNMENTAL IMPORTATIONS			
	Subpart A.—United States Government			
	* * * * * * *			
	Articles for the use of any agency of the United States Government:			

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
830.00	Engravings, etchings, photographic prints, whether bound or unbound, recorded video tapes, and exposed photographic films (including motion-picture films) whether or not developed *official government publications in the form of microfilm, microfiches, or similar film media.*			
*	* * *	*	*	*
	Subpart B.—Foreign Governments and International Organizations			
*	* * *	*	*	*
840.00	Public documents, *whether or not in the form of microfilm, microfiches, or similar film media* (including exposed and developed motion picture and other films, recorded video tapes, and sound recordings) issued essentially at the instance and expense of a foreign government, of a political subdivision of a foreign country, or of an international organization the membership of which includes two or more foreign countries.	Free		Free
	PART 4.—IMPORTATIONS OF RELIGIOUS, EDUCATIONAL, SCIENTIFIC, AND OTHER INSTITUTIONS			
*	* * *	*	*	*
851.67	*Tools specially designed to be used for the maintenance, checking, gauging or repair of scientific instruments or apparatus admitted under item 851.60.*	*Free*		*Free*
*	* * *	*	*	*

PART 7.—OTHER SPECIAL CLASSIFICATION PROVISIONS

Part 7 headnotes:

[1. No article shall be exempted from duty under item 870.30 unless a Federal agency or agencies designated by the President determines that such article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character. Whenever the President determines that there is or may be profitmaking exhibition or use of articles described in item 870.30 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry of such foreign articles to insure that they will be exhibited or used only for nonprofitmaking purposes.]

1. (a) No article shall be exempted from duty under item 870.30 unless either—

(i) a Federal agency (or agencies) designated by the President determines that such article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character (17 UST (pt. 2) 1578; Beirut Agreement), or

(ii) such article—

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	(A) is imported by, or certified by the importer to be for the use of, any public or private institution or association approved as educational, scientific, or cultural by a Federal agency or agencies designated by the President for the purpose of duty-free admission pursuant to the Nairobi Protocol to the Florence Agreement, and			
	(B) is certified by the importer to be visual or auditory material of an educational, scientific, or cultural character or to have been produced by the United Nations or any of its specialized agencies.			
	For purposes of subparagraph (i), whenever the President determines that there is, or may be, profitmaking exhibition or use of articles described in item 870.30 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry under that item of such foreign articles to insure that they will be exhibited or used only for nonprofitmaking purposes.			
	(b) For purposes of items 870.32 through 870.35, inclusive, no article shall be exempted from duty unless it meets the criteria set forth in subparagraphs (a)(ii) (A) and (B) of this headnote.			
*	* * *	*	*	*
	4. (a) For purposes of items 870.65, 870.66, and 870.67, the term 'blind or other physically or mentally handicapped persons' includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.			
	(b) Items 870.65, 870.66, and 870.67 do not cover—			
	(i) articles for acute or transient disability;			
	(ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;			
	(iii) therapeutic and diagnostic articles; or			
	(iv) medicine or drugs.			
*	* * *	*	*	*
870.30	Developed photographic film, including mtoion picture film on which pictures or sound and pictures have been recorded; photographic slides; transparencies; sound recordings; recorded video-tape; models *(except toy models);* charts; maps; globes; and posters; all of the foregoing which are determined to be visual or auditory materials in accordance with headnote 1*(a)* of this part.	Free		Free
	Articles determined to be visual or auditory materials in accordance with headnote 1 of this part:			
870.32	*Holograms for laser projection; microfilm, microfiches, and similar articles.*	*Free*		*Free*
870.33	*Motion-picture films in any form on which pictures, or sound and pictures, have been recorded, whether or not developed.*	*Free*		*Free*
870.34	*Sound recordings, combination sound and visual recordings, and magnetic recordings: video discs, video tapes, and similar articles.*	*Free*		*Free*
870.35	*Patterns and wall charts; globes; mock-ups or visualizations of abstract concepts such as molecular structures or mathematical formulae; materials for programmed instruction; and kits containing printed materials and audio materials and visual materials or any combination of two or more of the foregoing.*	*Free*		*Free*
*	* * *	*	*	*

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISION—Continued

Item	Articles	Rates of Duty		
		1	Special	2
	Articles specially designed or adapted for the use of benefit of the blind or other physically or mentally handicapped persons:			
	Articles for the blind:			
870.65	*Books, music and pamphlets, in raised print, used exclusively by or for them.*	*Free*		*Free*
870.66	*Braille tablets cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.*	*Free*		*Free*

* * * * * * *

APPENDIX TO THE TARIFF SCHEDULES

Item	Articles	Rates of Duty		Effective Period
		1	2	
	PART 1.—TEMPORARY LEGISLATION			
	Subpart A.—Temporary Provisions for Additional Duties			
	Subpart A headnote: 1. Except as provided in general headnote 3(e)(iii)(A) the duties provided for in this subpart are cumulative duties which apply in addition to the duties, if any, otherwise imposed on the articles involved. The duties provided for in this subpart apply only with respect to articles entered during the period specified in the last column. *2. (a) The rate of duty in column 1 of item 901.25 shall be equivalent to, in cents per pound, the amount of the European Communities export refund on pasta exported to the United States, as determined by the Secretary of Agriculture for the calendar month in which the article is entered.* *(b) The Secretary of Agriculture shall calculate, on the first business day of each month, the value, in cents per pound, of the European Communities export refund on pasta for that month. The Secretary of Agriculture shall notify the Secretary of the Treasury of such determination and publish such determination in the Federal Register.*			
901.25	*Macaroni, noodles, vermicelli, and smiliary alimentary pastas, whether or not containing egg or egg products (provided for in items 182.35 and 182.36 part 15B, schedule 1) if a product of a member of the European Communities.*	*See Headnote...*	*No change*	*No change*
	Subpart B.—Temporary Provisions Amending The Tariff Schedules			

* * * * * * *

Subpart B headnotes:

1. Any article described in the provisions of this subpart, if entered during the period specified in the last column, is subject to duty at the rate set forth herein in lieu of the rate provided therefor in schedule 1 to 8, inclusive, except as provided in general headnote 3(a)(iii)(A).
2. For purposes of item 903.25—
   (a) the term "culled carrots" refers to those carrots which fail to meet the requirements of the United States Department of Agriculture for carrots of grades "U.S. No. 1" or "U.S. No 2" (See 7 CFR section 2851.4141 and 2851.4142); and.
   (b) the total quantity of carrots which may be entered under item 903.25 during the period specified in that item shall not exceed 20,000 tons.
3. *For purposes of item 905.45, the term "duty-free quantity" means—*

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
	(a) for the 12-month period ending October 31, 1986, 161,600 dozen; and *(b) for any 12-month period thereafter, an amount equal to 101 percent of the duty-free quantity for the preceding 12-month period*			
903.60	Mixtures of mashed or macerated hot red peppers and salt (provided for in item 141.77 or 141.98, part 8C, schedule 1).	Free	No charge	On or before [6/30/85] *12/31/90*
903.65	Cantaloupes, fresh, if entered during the period from January 1 to May 15, inclusive of any year (provided for in items 148.12 and 148.17 part 9B, schedule 1).	Free	No change	On or before [5/15/85] *12/31/90*
*	*	*	*	*
	Feathers and downs, whether or not on the skin, crude, sorted (including feathers simply strung, for convenience in handling or transportation), treated, or both sorted and treated, but not otherwise processed (provided for in item 186.15, part 15D, schedule 1):			
903.70	Meeting both test methods 4 and 10.1 of Federal Standard 148a promulgated by the General Services Administration.	Free	No change	On or before [12/31/87] *12/31/90*
903.80	Other	Free	Free	On or before [12/31/87] *12/31/90*
*	*	*	*	*
905.10	Wool (provided for in part 1C, schedule 3): All wool provided for in items 306.00 through 306.24.	Free	Free	On or before [6/30/85] *12/31/90*
905.11	Wool not finer than 46s provided for in items 306.30 through 306.34.	Free	Free	On or before [6/30/85] *12/31/90*
905.25	*Yarns of silk (provided for in item 308.51, part 1D, schedule 3).*	*Free*	*No change*	*On or before 12/31/90*
905.30	*Grouped filaments and yarns, not textured, in continuous form, colored, of nylon or modacrylic, whether or not curled of not less than 20 denier per filament, to be used in the manufacture of wigs for dolls (provided for in item 309.32 and 309.33, part 1E, schedule 3, or item 389.62, part 7B, schedule 3).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
905.45	*Sweaters that— (i) do not contain foreign materials in excess of the percentage of total value limitation contained in general headnote 3(a), and (ii) are assembled in Guam, exclusively by United States citizens, nationals, or resident aliens, by joining together (by completely sewing, looping, linking, or other means of attaching) at least 5 otherwise completed major knit-to-shape component parts of foreign origin, if entered before the aggregate quantity of such sweaters that is entered during any 12-month period after October 31, 1985, exceeds the duty-free quantity for that period.*	*Free*		*On or before 10/31/92*
*	*	*	*	*
	Needle-craft display models, primarily hand stitched, of completed mass-produced kits:			
906.10	Articles provided for in items 355.16, 360.70, 360.78, 364.18, 364.23, 364.30, 365.78, 365.84, 365.86, 366.79, 367.34, 367.55, 367.60, 386.04, 386.06, 386.13, 386.50, 388.40, and 389.62 of schedule 3 (except shoe uppers and tents).	Free	No change	On or before [6/30/85] *12/31/90*
906.12	Aprons and baby bibs (provided for in items 383.03, 383.08, 383.20, and 383.50, part 6F, of schedule 3).	Free	No change	On or before [6/30/85] *12/31/90*

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
906.26	*p-Sulfobenzoic acid, potassium salt (provided for in item 404.28, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
	* * * *	*	*	*
906.34	*3-Ethylamino-p-cresol (provided for in item 404.96, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.36	*Mixtures of 2-[1-(ethoxyimino)-butyl]-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexen-1-one (sethoxydim) and application adjuvants (provided for in item 407.19, part 1B, or item 430.20, part 2D of schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.42	*3,5-Dinitro-o-toluamide (provided for in item 411.93, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.45	*Dicyclohexylbenzothiazyl-sulfenamide (provided for in item 406.39, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.48	*2,4-Dichloro-5-sulfamoylbenzoic acid (provided for in item 406.56, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
	* * * *	*	*	*
906.59	*2-Amino-5-chloro-4-methylbenzene-sulfonic acid and 2-amino-5-chloro-4-ethylbenzene-sulfonic acid (provided for in item 404.88, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.60	*4,11-Diamino-1-H-naphth[2,3-f]isoindole-1,3,5,10(2H)-tetrone (provided for in item 405.53, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.01	Triphenyl phosphate (provided for in item 409.34, part 1C, schedule 4).	Free	No change	On or before [9/30/85] *12/31/90*
	* * * *	*	*	*
907.07	*4-Chloro-2.5-dimethoxy aniline (CAS No. 6358-64-1) (provided for in item 405.01, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
	* * * *	*	*	*
907.09	*2.2-Oxamidobis-[ethyl 3-(3,5-ditert-butyl-4-hydroxyphenyl)propionate] (provided for in item 405.34, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.10	Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure (however provided for in items 402.36 through 406.63, part 1B, schedule 4, *but excluding 6,7-dihydroxy-2-naphthalene sulfonic acid sodium salt provided for in item 403.57,*) to be used in the manufacture of photographic color couplers.	Free	No change	On or before [9/30/85] *12/31/90*
907.11	*Mixtures containing derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)phenyl] acetamide (provided for in item 407.19, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.12	Photographic color couplers (provided for in item 408.41, part 1C, schedule 4).	Free	No change	On or before [9/30/85] *12/31/90*
907.13	Mixtures containing not less than 90 percent by weight of stereoisomers of 2-isopropyl-5-methylcyclohexanol, but containing not more than 30 percent by weight of any one such stereoisomer (provided for in item 407.16, part 1B, schedule 4).	Free	No change	On or before [12/31/87] *12/31/90*
907.14	Mixtures of 3-ethylbiphenyl (m-ethylbiphenyl) and 4-ethylbiphenyl (p-ethylbiphenyl) (provided for in item 407.16, part 1B, schedule 4).	Free	No change	On or before [6/30/85] *12/31/90*
[907.15	1,1-Bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol) (provided for in item 408.28, part 1C, schedule 4).	6.9% ad val. (D) No change (A,E,I).	7¢ per lb. + 41% ad val.	On or before 9/30/85]
907.15	*1,1-Bis(4-chlorophenyl)-2.2.2-trichloroethanol (Dicofol) (provided for in item 408.28, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
	* * * *	*	*	*

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
907.17	Sulfapyridine (provided for in item 411.27, part 1C, schedule 4).	Free	Free	On or before [12/31/85] *12/31/90*
*	*	*	*	*
907.21	Flecainide acetate (provided for in item 412.12, part 1C, schedule 4).	Free	No change	On or before [12/31/87] *12/31/90*
*	*	*	*	*
907.23	o-Benzyl-p-chlorophenol (provided for in item 408.16, part 1C, schedule 4).	Free	No change	On or before [12/31/87] *12/31/90*
907.24	*1,2-Dimethyl-3,5-diphenylpyrazolium methyl sulfate (difenzoquat methyl sulfate) (provided for in item 408.19, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.27	*Mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) and application adjuvants (provided for in item 408.36, part 1C, schedule 4.*	*Free*	*No change*	*On or before 12/31/90*
907.28	*Mixtures of mancozeb (a coordination product of zinc ion and manganese ethylenebisdithiocarbarnate), dinocap (a mixture of 2,4-dinitro-6-octylphenyl crotonate, 2,6-dinitro-4-octylphenyl crotonate and nitroctylphenols), stabilizer and application adjuvants (provided for in item 408.38, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.30	*Cross-linked polyvinyl-benzyltrimethylammoniun chloride (cholestyramine resin USP) (provided for in item 412.70, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.35	2-(4-Aminophenyl)-6-methylbenzo-thiazole-7-sulfonic acid (provided for in item 406.39, part 1B, schedule 4).	Free	No change	On or before [12/31/87] *12/31/90*
*	*	*	*	*
907.39	*d-6-Methoxy-d-methyl-2-naphthaleneacetic acid and its sodium salt (provided for in item 412.22, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.44	*2,2-Bis(4-Cyanatophenyl) (provided for in item 405.76, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.47	*Aminoethylphenylpyrazole (Phenylmethylaminopyrazole) (provided for in item 406.36, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.48	*1-(4-(1,1-Dimethylethyl) phenyl-4-(hydroxydiphenyl.methyl-1-piperidinyl)-1-butanone (provided for in item 405.42, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.49	*Butyl 2-[4-(5-trifluoromethyl-2-pryidinyloxy)-phenoxy] propanoate (as provided for in item 408.23, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.52	*Benzethonium chloride (provided for in item 408.32, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.53	*3-amino-3-methyl-I-butyne (provided for in item 425.52, part 2D, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.55	*Secondary-butyl chloride (provided for in item 429.47, part 2D, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.56	*Metaldehyde (provided for in item 427.58, part 2D, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.57	*Paraldehyde, USP grade (provided for in item 439.50, part 3C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.58	*Malononitrile (provided for in item 425.42, part 2D, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
907.60	*Mixtures of manganese ethylenebisdithiocarbamate (mareb); zinc ethylenebisdithiocarbamate (zineb); a coordination product of zinc ion and manganese ethylenebisdithiocarbamate (mahcozeb); tris[ammine-[ethylenebis(dithiocarbanato)]-zinc(2+)].tetra-hydro-1,2,4,7-dithiadiazocine-3,8-dithione] (metriam); stabilizer and application adjuvants (provided for in item 432.15, part 2E, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.63	[Nicotine resin complex (provided for in item 437.13, part 3B, schedule 4)] *Nicotine resin complex put up in measured doses in chewing gum form (provided for in item 438.02, part 3B, schedule 4).*	Free	No change	On or before [12/31/87] *12/31/90*
*	*	*	*	*
907.72	*Mixtures of two or more organic compounds containing one or more cross-linked sodium polyacrylate polymers (provided for in item 430.20, part 2D, Schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.78	*Cyclosporine (provided for in item 439.30, part 3C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.80	*1,5 naphthalene diisocyanate (provided for in item 405.82, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.81	*3,7-Bis (dimethylamino)-Phenazathionium chloride (methylene blue) to be used as a process stabilizer in the manufacture of organic chemicals (provided for in item 409.74, part 1C, schedule 4.*	*Free*	*No change*	*On or before 12/31/90*
907.83	*Nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate (provided for in item 445.48, part 4A, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.84	*p-Toluenesulfonyl chloride (provided for in item 403.05, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.85	*6-Hydroxy-2-naphthalenesulfonic acid; 6-Hydroxy-2-naphthalenesulfonic acid sodium salt/ 6-Hydroxy-2-napthalenesulfonic acid, potassium salt; 6-Hydroxy-2-napthalenesulfonic acid, ammonium salt, (provided for in item 403.57, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.86	*2,6-Dichlorobenzaldehyde (provided for in item 403.81 part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.87	*8-Amino-1-napthalenesulfonic acid and its salts (provided for in item 404.52, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.88	*5-Amino-2-(p-aminoanilino) benzenesulfonic acid; (provided for in item 404.84, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.89	*1-Amino-2,4-dibromoanthraquinone;* a,a,a-Trifluoro-o-toluidine (provided for in item 404.88, part 1B, schedule 4).	*Free*	*No change*	*On or before 12/31/90*
907.90	*1-Amino-8-hydroxy-3, 6-naphthalenedisulfonic acid, 4-Amino-5-hydroxy-2-7-naphalenedisulfonic acid, monosodium salt (H acid, monosodium salt); 2-Amino-5-nitrophenol (provided for in item 404.92, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.91	*1-Amino-4-bromo-2-anthraquinone-sulfonic acid (Bromamine acid); 1-Amino-4-bromo-2-anthraquinone-sulfonic acid (Bromamine acid), sodium salt; 6-Amino-4-hydroxy-2-naphthalene-sulfonic acid (Gamma acid); 3,3'-Dimethoxy-benzidine (o-Dianisidine): 3,3'-Dimethoxy-benzidine dihydrochloride (o-Dianisidine dihydrochloride); 4-Methoxyaniline-2-sulfonic acid (provided for in item 405.07, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.92	*N-(7-Hydroxy-1-napthal) acetamide (provided for in item 405.28, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.93	*N,N-Bis(2-cyanoethyl) aniline (provided for in item 405.60, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
907.94	6-(3-Methyl-5-oxo-1-pyrazolyl)-1,3-naphthalene-disulfonic acid (Amino-J-pyrazolone) (CAS No. 7277-87-4); 3-Methyl-1-phenyl-5-pyrazolone (Methylphenyl-pyrazolone) (provided for in item 406.36, part 1B, schedule 4).	Free	No change	On or before 12/31/90
907.95	2-Amino-N-ethyl-benzenesulfonanilide (provided for in item 406.49, part 1B, schedule 4).	Free	No change	On or before 12/31/90
907.96	m-Sulfamino-pyrazolone m-Sulfamido-phenyl-methyl-pyrazolone) (provided for in item 406.56, part 1B, schedule 4).	Free	No change	On or before 12/31/90
907.97	1-(3-Sulfopropyl) pyridinium hydroxide (provided for in item 406.42, part 1B, schedule 4).	Free	No change	On or before 12/31/90
907.98	Mixtures of 2,4,-dinitro-6-oxtyl phenyl crotonate, 2,6-dinitro-4-octyl phenyl crotonate and nitrooctyl phenols (dinocap) (provided for in item 408.16, part 1C, schedule 4).	Free	No change	On or before 12/31/90
907.99	Mixtures of 2,4,-dinitro-6-octyl phenyl crotonate, 2, 6-dinitro-4-octyl phenyl crotonate and nitrooctyl phenols (dinocap) and application adjuvants (provided for in item 408.38, part 1C, schedule 4).	Free	No change	On or before 12/31/90
908.01	2-[(3-Nitrophenyl)-sulfonyl] ethanol (CAS No. 41687-30-3) (provided for in item 406.00, part 1B, schedule 4).	Free	No change	On or before 12/31/90
908.02	4-Chloro-2-nitro aniline (CAS No. 89-63-4) (provided for in item 404.88, part 1B, schedule 4).	Free	No change	On or before 12/31/90
908.03	3-(4' aminobenzamido) Phenyl-beta-hydroxyethyl sulfone (CAS No. 20241-68-3) (provided for in item 406.0, part IB, schedule 4).	Free	No change	On or before 12/31/90
908.04	2.5-Dimethoxy-acetanilide (CAS No. 3467-59-2) (provided for in item 405.34. part 1B, schedule 4).	Free	No change	On or before 12/31/90
908.05	3,4-Diamino phenetole dihydrogen sulfate (CAS No. 85137-09-3) (provided for in item 405.09, part 1B, schedule 4).	Free	No change	On or before 12/31/90
908.06	Diphenyl guanidine and di-ortho-tolyl guanidine (provided for in item 405.52, part 1B, schedule 4).	Free	No change	On or before 12/31/90
908.07	N-Ethyl-o-toluene-sulfonamide and N-Ethyl-p-toluene-sulfonamide (provided for in item 409.34, part 1C, schedule 4).	Free	No change	On or before 12/31/90
908.08	6-Amino-1-naphthol-3-sulfonic acid (provided for in item 405.00. part 1B, schedule 4).	Free	No change	On or before 12/31/90
908.09	2-(4-aminophenyl)-6-methylbenzothia-zole-7-sulfonic acid (provided for in item 406.40 part 1B, schedule 4).	Free	No change	On or before 12/31/90
908.10	β-Naphthol (provided for in item 403.28, part 1B, schedule 4).	Free	No change	On or before 12/31/90
908.11	1-Amino-2-chloro-4-hydroxyanthra-quinone (provided for in item 405.07, part 1B. schedule 4).	Free	No change	On or before 12/31/90
* * *	*	*	*	*
909.15	Kitchenware of transparent, nonglazed glass ceramics, having a linear coefficient of expansion not exceeding 10×10^{-7} per Kelvin within a temperature range of 0°C to 300°C (provided for in item 534.97, part 2C, schedule 5).	Free	No change	On or before 12/31/89
* * *	*	*	*	*
909.35	Glass inners designed for vacuum flasks or for other vacuum vessels (provided for in items 545.31, 545.34, 545.35, and 545.37, part 3C, schedule 5).	3.6% ad val. (I). Free (A,E)	55% ad val	On or before 12/31/90
* * *	*	*	*	*
911.25	Synthetic rutile (provided for in item 603.70, part I, schedule 6).	Free	No change	On or before [6/30/82] 12/31/90
* * *	*	*	*	*
911.95	Entertainment broadcast band receivers valued not over $40 each (however provided for in schedule 6) incorporating timekeeping or time display devices, not in combination with any other article, and not designed for motor vehicle installation.	Free	No change	On or before [12/31/86] 12/31/90

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
911.96	*Tungsten ore (provided for in item 601.54, part 1, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
912.01	*Bicycle tires and tubes and rim strips, the foregoing of rubber or plastics (provided for in item 732.42, 772.48 and 772.57, part 12C, schedule 7).*	*Free*	*No change*	*On or before 12/31/90*
*	* * * *	*	*	*
912.03	*Carding and spinning machines specially designed for wool, other than machines specially designed for the manufacture of combed wool (worsted) yarns (provided for in item 670.04, part 4E, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
*	* * * *	*	*	*
912.05	Generator lighting sets for bicycles, and parts thereof (provided for in item 653.39, part 3F, schedule 6).	Free	No change	*On or before* [6/30/86] *12/31/90*
912.06	*Bicycle chains (provided for in items 652.13 and 652.15, part 3F schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
912.07	Machines designed for heat-set, stretch texturing of continuous man-made fibers (provided for in item 670.06, part 4E, Schedule 6).	Free	No Change	On or before [12/31/90] *12/31/85*
912.08	Single cylinder fine gauge hosiery knitting machines and double cylinder jacquard hosiery knitting machines (provided for in items 670.16 and 670.18, part 4E, schedule 6).	Free	No change	On or before [9/31/85] *12/31/90*
912.09	Double-headed latch needles (provided for in item 670.58, part 4E, schedule 6).	Free	No change	On or before [6/30/85] *12/31/90*
912.10	Caliper brakes, drum brakes, coaster brakes, *front and rear derailleurs, shift levers, cables and casings for derailleurs,* two-speed hubs with internal gear-changing mechanisms three-speed hubs incorporating coaster brakes, click twist grips, trigger and twist grip controls for three-speed hubs, [multiple free wheel sprockets,] *free wheel sprockets* cotterless type crank sets, frame lugs, *and* parts of all the foregoing[, including cable or inner wire for caliper brakes and casing therefor, whether or not cut to length, and parts of bicycles consisting of sets of steel tubing cut to exact length and each set having the number of tubes needed for the assembly (with other parts) into the frame and fork of one bicycle] (provided for in items 732.35, 732.38, 732.41, and 732.42, part 5C, schedule 7).	Free	No change	On or before [6/30/86] *12/31/90*
*	* * * *	*	*	*
912.12	*Cable or inner wire for caliper brakes and casing therefor, whether or not cut to length (provided for in items 642.08, 642.11, 642.14, 642.16, 642.18, 642.20, and 657.25, parts 3B and 3G, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
*	* * * *	*	*	*
912.14	*Television picture tubes which would be included in assemblies provided for in item 684.96 but for headnote 4 to part 5, and not provided in item 912.16 or 912.19.*	*11% ad val.*	*No change*	*On or before 10/31/87*
909.15	*Kitchenware of transparent, nonglazed glass ceramics, having a linear coefficient of expansion not exceeding 10×10^{-7}* per Kelvin within a temperature range of 0° C to 300° C (provided for in 534.97, part 2C, schedule 5).	*Free*	*No Change*	*On or before 12/31/89*
912.16	*Television picture tubes, color, having a video display diagonal of less than 12 inches (provided for in item 687.35, part 5, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
*	* * * *	*	*	*
912.18	*Parts of indirect process electrostatic copying machines, which machines reproduce the original image onto the copy material by electrostatic transference to and from an intermediate (provided for in item 676.56, part 4G, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
912.19	*Latch needles and needles for knitting machines, the foregoing except double-headed latch needles (provided for in items 670.58 and 670.72, part 4E, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
912.20	Articles provided for in parts 5D and 5E of schedule 7 (except ballons, marbles, dice, and diecast vehicles), valued not over five cents per unit; and jewelry provided for in part 6A of schedule 7 (except parts), valued not over 1.6 cents per piece.	Free	No change	On or before [12/31/86] *12/31/90*
912.21	*Double cylinder hosiery knitting machines other than jacquard hosiery knitting machines (provided for in items 670.16 and 670.18, part 4E, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
912.24	*Extracorporeal shock wave lithotripters imported by nonprofit hospitals and research or educational institutions (provided for in item 709.17, part 2, schedule 7).*	*Free*	*No change*	*On or before 12/31/87*
912.30	Stuffed dolls (with or without clothing) and doll skins for stuffed dolls (provided for respectively in items 737.23 and 737.26, part 5E, schedule 7).	Free	No change	On or before [12/31/85] *12/31/90*
912.32	*Stuffed or filled toy figures of animate objects (except dolls) not having a spring mechanism and not exceeding 25 inches in either length, width, or height (provided for in item 737.30 or 737.40, part 5E, schedule 7).*	*Free*	*No change*	*On or before 12/31/90*
912.34	Stuffed or filled toy figures or inanimate objects not having a spring mechanism (provided for in item 737.47, part 5E, schedule 7).	Free	No change	On or before [12/31/85] *12/31/90*
912.36	Skins for stuffed toy figures of animate and inanimate objects (provided for in item 737.51, part 5E, schedule 7).	Free	No change	On or before [12/31/85] *12/31/90*
912.45	Frames for hand-held umbrellas chiefly used for protection against rain (provided for in item 751.20, part 8B, schedule 7).	Free	No change	On or before [12/31/86] *12/31/90*
912.46	*Jacquard cards and jacquard heads for power-driven weaving machines, and parts thereof (provided for in items 670.56 and 670.74, respectively, part 4E, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
915.10	*Transparent plastic sheeting containing 30% or more of lead by weight (provided for in item 774.55, part 12B, schedule 7).*	*Free*	*No change*	*On or after* 12/31/90
915.11	*Nonwoven porous sheets of material comprised in part of 1.0 to 6 denier man-made fibers of between 4 and 13 millimeters in length, calendered to a sheet density of 0.4 to 1.0 grams per cubic centimeter, having a smooth surface devoid of loose or protruding fibers, and to be used in the production of reverse osmosis filter elements for water purification systems.*	*Free*	*Free*	*On or after* 12/31/90

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
915.20	*Personal effects of aliens who are participants in or officials of the Tenth Pan American Games, or who are accredited members of delegations thereto, or who are members of the immediate families of any of the foregoing persons, or who are their servants; equipment for use in connection with such games; and other related articles as prescribed in regulations issued by the Secretary of the Treasury.*	*Free*	*Free*	*On or before 9/30/87*