

EXECUTIVE COMMITTEE MEETING ON WHETHER TO CONSIDER FAVORABLY APPROVING THE COMMITTEE'S RECOMMENDATION, AS AMENDED, TO IMPLEMENT THE U.S.-AUSTRALIA FREE TRADE AGREEMENT

WEDNESDAY, JUNE 23, 2004

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to notice, at 10:00 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Hatch, Snowe, Kyl, Thomas, Baucus, Breaux, Conrad, Bingaman, and Lincoln.

Also present: Kolan Davis, Republican Staff Director and Chief Counsel; Russ Sullivan, Democratic Staff Director; John K. Veroneau, General Counsel, Executive Office of the President; Ralph F. Ives, Assistant U.S. Trade Representative, Southeast Asia and Pacific, APEC Affairs; Everett Eissenstat, Chief Trade Counsel; John Gilland, Trade Counsel; and Carla Martin, chief clerk.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

The Chairman. I will call the meeting to order.

I want to welcome everybody to our mark-up, and thank you for your patience.

I am proceeding, even though Senator Baucus is at another committee meeting, because he said that it was all right for me to go ahead. We will have opening statements, and he will be here very shortly.

Last week, the Finance Committee held a hearing to examine the substance of the U.S.-Australia and U.S.-Morocco free trade agreements. That hearing provided an opportunity for all of us members to delve into the details of the Australia agreement and to question the administration regarding the text of the agreement itself.

Today, in contrast, we are here to review the implementation legislation for the U.S.-Australia Free Trade Agreement. So, I hope that members will focus their discussion today on the implementing legislation, since we had an opportunity to raise questions about the agreement itself last week.

As I indicated last year during the implementation phase of the U.S.-Chile, and also the U.S.-Singapore free

trade agreements, consultation with the Congress is critical to the success of the trade promotion authority procedures.

I will note here that the administration consulted very closely with the committee members here on the Finance Committee throughout the negotiations on the Australia agreement. I hope every member took advantage of every opportunity to participate in those consultation sessions.

While I may not agree with the substantive outcome of every aspect of those negotiations, I do believe, for myself and for members, and particularly for staff that are so integrally involved in all of these consultative processes, that we have all had ample opportunity to provide input into these agreements.

Now that the negotiations are concluded and the agreement is signed, we now turn at this point to implementation. There are a number of steps that the administration and Congress must take to translate trade agreement into law.

First, the Congress, as well as the administration, worked to develop legislation implementing the trade agreements under trade promotion authority procedures. The proposed bills must contain provisions approving the trade agreement and the Statement of Administrative

Action proposed to implement the agreement.

Further, if changes to federal law are required to implement the agreement, these changes must be limited to only those laws which are necessary or appropriate to implementing that agreement.

In my view, the standards for what constitutes "necessary and appropriate" should be narrowly construed, and I hope that previous chairmen have done the same thing so that my interpretation is not contrary to practice.

Trade promotion authority procedures alter the general structure under which the Senate considers legislation. Trade promotion authority procedures are unique. Because they are unique, their use should be narrowly tailored. We have strived to adhere to that standard in drafting the implementation bill we are now considering.

Following consultation on the elements of the implementing legislation, the proposed bill is submitted to the committees of jurisdiction for their informal review. Now, this is what is going on right now, today.

While not required by trade promotion authority procedures, the Finance Committee has traditionally conducted this review in an open and public forum. That is the tradition that we are following here today.

This review of the proposed implementing bill continues and concludes the consultative process, which is truly the heart of the trade promotion authority. Once the committee's recommendations on the proposed implementing legislation are sent to the administration, then the administration is going to review our recommendations and then they will formally, at that point, submit the bill to Congress.

Once the bill is introduced, it must be formally reported then to the Finance Committee. Only then will it be considered by the full Senate for an up or down vote.

It is my intent to complete consideration of this bill prior to the August recess. I will note, however, that I am equally interested in seeing Congress implement the U.S.-Morocco Free Trade Agreement yet this summer.

Thus, while I am comfortable conducting this informal review today, I am reluctant to officially report this legislation out of the Finance Committee until we see significant and substantial progress in moving the implementation legislation on the U.S.-Morocco Free Trade Agreement. I trust the administration will work with me over the next several weeks to ensure quick consideration of that agreement.

At this point, or I should say when Senator Baucus

arrives, we will stop everything so that he can make his opening statement.

I would like to remind members that we need a quorum to vote out the committee's recommendations today, so I hope that we can work with staff to get the appropriate number of Senators here to complete work. When we get seven here, we will consider any amendments that people have to offer.

So, let me see. Right now, we have four of us. Does any member other than Senator Baucus want to make a statement at this point? The Senator from North Dakota.

OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator Conrad. First of all, I want to thank the Chairman. I certainly thank the Ranking Member for his courtesy.

My own belief is that the agreement before us is another mistake in a series of mistakes in terms of U.S. trade policy. When I look over the horizon, what I see is record trade deficits coupled with record budget deficits that put us in a more and more precarious position in terms of our international standing and the future strength of our economy.

As I examine these agreements, I think, once again, this is almost a perfect example of an agreement that was arrived at not because it is in the best interests of the U.S. economy, but because this is a nod to Australia for backing our effort in Iraq.

As I look back to post-World War II trade agreements by the United States, I see repeatedly that we have negotiated away our economic interests in order to secure either diplomatic gains, or perceived diplomatic gains, or as payoffs for some other support we have received from countries involved.

When this administration came in, they told us

repeatedly that they were going to make agricultural trade a focus and a priority, that they were going to open substantial new markets and that they were going to even level the playing field between us and our major competitors in agricultural trade.

Well, they have been a failure on both counts. We have not seen significant new market openings for the United States' agricultural industry and we have not seen any leveling of the playing field between us and our major competitors, the Europeans.

In fact, the Europeans enjoy more than a 5:1 advantage on domestic support and an 87:1 advantage on export subsidy. That gap has not been closed. So, I think we are headed along the failure chain that puts agriculture at risk.

As I look at this agreement, it is a perfect example of what I am discussing. On agriculture, we had almost nothing to gain from this agreement and a lot to lose. The simple fact is that Australia is not ever going to be a large export market for the United States in agriculture, but it poses a serious threat to certain commodities produced here at home.

Under these circumstances, opening our market to further import competition without creating significant new export opportunities strikes me as just a serious

mistake. That is exactly what the Australia Free Trade Agreement does.

Over the long term, it puts our cattle industry and our dairy industry at increasing risk, with virtually nothing in return. That is a bad deal and I do not think the United States can continue to make bad deals. I understand there is a desire on the part of the administration to reward Australia for backing our effort in Iraq. I understand that. I respect that.

But, frankly, that is exactly the kind of calculus that has led us to the precarious position we are in today, record trade deficits and, once again, a trading away of U.S. economic interests for some perceived diplomatic benefit.

Mr. Chairman and colleagues, overall, I do not believe this is a good deal for United States agriculture. Our exports will not see significant gains. Our beef and dairy sectors are put at additional risk. We did not discipline the Australia Wheat Board, a monopoly, operating in secret in a way that is totally against the fundamental principles of the WTO. So, I will not support this agreement.

I thank the Chairman.

The Chairman. Senator Baucus?

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator Baucus. Thank you, Mr. Chairman.

Mr. Chairman, I am pleased to be here this morning as we consider legislation to implement the proposed free trade agreement with Australia.

Last week, we held a hearing to consider the Australia agreement in some detail. Although the President has already signed the agreement, under United States law it has no domestic force or effective until Congress enacts implementing legislation.

So, our task is to take a hard look at the draft implementing bill for the agreement. This administration has prepared that bill, as we all know, in consultation with the committee staff.

Today's mark-up is something that the Finance Committee has traditionally done each time it considers implementing legislation for a trade agreement under fast track procedures. Holding this mark-up is critical. It makes the fast track process transparent.

Last summer, we used this same procedure to mark up implementing legislation for the Singapore and the Chile free trade agreements, and I want to commend you, Chairman Grassley, for continuing to honor this

tradition.

Equally important, I am pleased that we have again made today's mark-up open to the public. I think it sets the right tone for how we will consider future trade agreements.

The bill before us today is very similar to the implementation acts for the Singapore and Chile agreements, as well as those for NAFTA and the U.S.-Jordan Free Trade Agreement.

It is narrowly tailored to include only what is necessary or appropriate to implement the agreement. I have worked hard with the administration to strengthen the administration's draft bill, especially on beef safeguards. These safeguards, I believe, will help maintain market stability for our beef industry.

Reading the agreement, I have some doubts about how the safeguards were supposed to operate and whether they would be automatic. During the hearing last week, I asked Ambassador Johnson that question and he assured me that the safeguards are, in fact, automatic.

I asked the administration to clarify the safeguards in the implementing bill. I am pleased to see that the draft bill we are considering today makes clear that the quantity-based and the price-based beef safeguards are imposed automatically at the port of entry once the

specific volume- or price-based conditions have been met.

I was, however, initially troubled by the provision in the draft bill permitting the U.S. Trade Representative to waive the beef safeguard if the Trade Representative finds that "extraordinary market conditions demonstrate that a waiver would be in the national interest."

It is very unlikely that this provision will ever be used. Even so, I push for procedural guarantees to make sure there is, in fact, consultation with the Congress and with our beef producers, and other procedural provisions are put into place before any kind of decision of this nature could be made, which is unlikely in the first place, that they will ever be made.

I want to thank the administration for working with me to develop this procedural guarantee. It is the first of its kind. I look forward to working with the committee and the Congress as we complete the fast track process of this bill.

The Chairman. If anybody else has statements they want to make, I would entertain those statements.

What I would like to do, though, if there are other statements, when we get seven people here, I would like to consider amendments. Then just as soon as we get 11 people here, then we would have final disposal of it.

Does anybody want to make any additional statement? Yes. The Senator from Maine.

OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, A U.S. SENATOR FROM MAINE

Senator Snowe. Thank you, Mr. Chairman. I appreciate the opportunity to make a few points on the U.S.-Australia Free Trade Agreement.

Obviously, Australia is by no means a small player in the U.S. international trade portfolio, being our thirteenth largest trading partner. For my home State of Maine, it is about the twelfth largest foreign market.

I understand that a key aspect of this agreement is that, as soon as it goes into effect, 99 percent of U.S. manufactured goods exported to Australia will be given immediate duty-free treatment.

So, I realize this is a key factor in the agreement before us and I appreciate the efforts on the part of the negotiators for working to bring it to fruition, because manufacturing is too vital to leave to chance.

Mr. Chairman, I want to be able to support this agreement, but concerns persist. As you know, and as I have indicated to you and to the staff, the dairy industry is still not completely supportive of this agreement.

I have been in contact with producers, both nationally and in my home State. In particular, they

have expressed concerns about increases in the importation of milk protein concentrates, which are dried by-products of milk that can be used in prepackaged mixes and production of some types of cheese.

Currently, the tariffs on these may be viewed to be minimal and are going to be phased out under this agreement over 18 years, however, as we have seen over this last decade, Mr. Chairman, there has been a tremendous surge in imports of concentrates and casein that really has had a serious impact on the dairy industry, both in my State, and, of course, nationally. Any slight variation with respect to tariffs or in the amount of imports obviously has a profound impact on the dairy industry.

In the decade of the 1990s, we have seen some tremendous growth in the imports of MPCs, as well as caseins. In fact, the imports just on the milk protein concentrates have surged from the mid-1990s, from 50 million pounds of milk equivalent in 1993 to nearly 200 million pounds in 2002.

Then when you add in the even larger volume of casein and total dairy protein imports, that has averaged nearly one billion pounds annually during the period 2000 to 2002. Obviously, this creates a negative ripple effect for U.S. dairy producers who have suffered from reduced

milk sales, lower prices, a weakened dairy price support program. Farmers collectively have lost a total of more than $1.2 billion between 2000 and 2002 because of these imports.

On behalf of the dairy farmers in the State of Maine, of which there are almost 400, I feel that it is important to recognize the effects that this agreement is going to have on this industry that is so crucial to our economy.

I would like to ask, Mr. Chairman, that a letter from the president of the Maine Dairy Industry Association, Dale Cole, be included in the record. I ask unanimous consent to include it in the record.

The Chairman. Without objection, so ordered.

[The letter appears in the appendix.]

Senator Snowe. I share Mr. Cole's views and concerns about the potential ramifications of the total elimination of this tariff. I recognize, Mr. Chairman, that there are many areas involving dairy in this agreement, and there were attempts to avoid the worst case scenario.

But in trade agreements, as we have experienced, regrettably, time and again, there are winners and there are losers. In this case, I am not convinced that dairy can be considered a winner. Australia is one of the

world's largest producers and exporters of milk protein concentrates.

The U.S. currently ranks third behind the European Union, New Zealand and Australia in exports of MPCs. Keep in mind, the European Union is now close to 25 nations, representing more than 450 million people. The fact that the United States as a single nation ranks third in Australia exports is certainly worth noting.

According to Mr. Cole, when processors opt to use imported MPCs using them instead of the fresh domestic by-product of milk, this lowers the demand for milk overall and leads to a drop in the prices paid to farmers.

I think he raises a very significant and valid point. Given the volume, given the fact that Australia is a significant player in the international arena, and certainly when it comes to dairy and dairy products, that this could have a major impact on the industry in my State that has already been devastated over the last 10 years, and most certainly since September 11 when there has been an impact on the dairy industry, and then the loss of the Northeast Dairy Compact "C" that expired and was not reauthorized in the Congress.

So, then when you combine that with the growth in imports, it really has had, I think, a major impact and

effect and represents dire consequences for our dairy industry.

They are in a precarious, tenuous situation, as we speak, Mr. Chairman. I do not want to add another variable to those circumstances, and therefore I will vote against this agreement.

In addition, Mr. Chairman, I, and 30 other Senators, have joined our colleague from Idaho, Senator Craig, in co-sponsoring a bill that addresses this issue of tariffs on MPCs. It would amend the tariff schedule so that there would be different tariff rate quotas and provide duty rates in certain cases of milk protein concentrates.

In addition to that, it would provide a ceiling for these imported products that come into the United States on a non-tariff basis. So, it would have a two-pronged effect. The tariff rate quotas that would be established in that legislation would obviously be consistent with the WTO.

I do believe that it will be critical for the Congress to consider that legislation that certainly would make it more compatible with this agreement. So, therefore, I will vote against this agreement and hopefully Senator Craig will be able to bring up his legislation and that we could act upon it, that ultimately could mitigate the effects of this agreement

and that we can get it into law, because I do think it is a crucial issue for the dairy industry nationally, and certainly in my own State. Hopefully we can address it from that perspective, Mr. Chairman.

I understand that other industries will benefit that certainly are important to Maine, such as the wood and lumber industry. I think that that is critical. But I have to look at the totality of the agreement. And for an industry that has faced some serious problems over the last decade, I certainly do not want to add to those circumstances.

In addition, as one who has looked at these agreements over the years, they have all good intentions, but ultimately they can result in unintended consequences.

As I said, it has already been hard hit by the net effect of previous trade agreements and the loss of more than 18,000 manufacturing jobs just since June of 2000. I think that it is very critical that we be very circumspect about who is going to win and who is going to lose under these agreements.

Thank you, Mr. Chairman.

The Chairman. Thank you.

I think, now, we will turn to our staff to give us a brief overview of the legislation.

Do you want to start out, Everett?

Mr. Eissenstat. Yes, sir. Thank you, Chairman Grassley and Ranking Member Baucus, members of the committee.

I am pleased to have an opportunity to briefly summarize the implementing bill today. I will first provide a general overview, and then go into some specific provisions in the bill.

The bill itself is divided into four titles. Title I approves the bill and establishes the general proclamation authority for the President, and the general regulatory authority for the administration to implement the agreement.

Title 2 contains changes to Customs law which are necessary or appropriate to implement the agreement. Title 3 establishes the bilateral and textile safeguards which are part of the agreement. Title 4 implements the government procurement provisions of the agreement.

Specifically, Title I, Section 101, provides for congressional approval of the agreement and the accompanying Statement of Administrative Action. Both are required to meet the provisions of the trade promotion authority bill.

Section 102 of the bill establishes the relationship of the agreement to federal and State law.

Section 103 authorizes the President to implement tariff modifications by proclamation, subject to the strict consultation and layover procedures which traditionally precede the President's use of this congressional grant of authority.

I will now turn to Title II and summarize the Customs provisions of the bill.

Section 201 authorizes the President to implement by proclamation the continuation, modification, or elimination of tariffs as the President determines to be necessary or appropriate to carry out the terms of the agreement.

Section 202 implements the agricultural safeguards, including the horticulture safeguard and the quantity and price-based beef safeguards.

The remaining sections of Title II of the implementing bill establish the rules of origin for the goods to qualify for preferential treatment, eliminate the merchandise processing fee, establish parameters for the voluntary disclosure of incorrect information, authorize actions to be taken by the administration to enforce the textile and apparel rules of origin, and authorizes the Secretary of the Treasury to prescribe regulations as may be necessary to carry out the Customs-related provisions of the agreement.

Title III of the bill establishes the bilateral and textile safeguard provisions of the agreement. Subtitle A of Title III sets forth procedures for the conduct of bilateral safeguard investigations by the International Trade Commission.

It also authorizes the President to provide relief under the bilateral safeguard, terminates the President's authority following appropriate transition periods, and authorizes the President to provide trade compensation when the U.S. imposes relief through bilateral safeguard actions.

Subtitle B of Title III sets forth procedures for the application of the textile and apparel safeguard measures. Under the textile safeguard, determinations for relief are made by the President, not the International Trade Commission.

The Statement of Administrative Action provides that Committee for the Implementation of Textile Agreements, or CITA, will make this determination.

Subtitle B also sets forth maximum periods for relief under the agreement, exempts articles from relief if relief has been previously granted under these safeguards, and establishes the rate of duty on imports of textile and apparel articles after relief is terminated.

Subtitle C of Title III authorizes the President in granting global safeguard relief in a Section 201 investigation to exclude imports from Australia when certain conditions are present.

Finally, Title IV of the bill implements the government procurement provisions of the agreement.

Mr. Chairman, Mr. Ranking Member, that concludes the summary of the implementing bill, and I am happy to answer any specific questions that you or members of the committee may have.

The Chairman. Mr. Gilland, did you have anything you wanted to say for the Minority?

Mr. Gilland. No, sir.

The Chairman. All right.

Is the administration here to speak or to answer questions? If you want to speak, you can speak now.

Mr. Veroneau. Mr. Chairman, the administration is here primarily to answer questions. Mr. Conrad just left the room, but in light of his comment I did want to note for the record that obviously the administration takes a completely opposite view of the characterization that he made about the motivation and the effect of this free trade agreement.

This agreement, we believe, and many others believe, is an important economic building block between the two

nations and was not motivated by any foreign policy matter, including Iraq.

Thank you.

The Chairman. Thank you.

Now, we do have seven members here. Oh. Senator Breaux, please go ahead. Yes.

Senator Breaux. Thank you. Thank you for the explanation.

Can someone address the subsidy program that Australia has for pharmaceuticals? They actually call it a pharmaceutical benefit scheme. I want to know, how does this free trade agreement address that scheme?

Mr. Ives. Thank you, Senator. Australia runs a pharmaceutical benefit scheme, which is a way the Australia government provides pharmaceuticals to its citizens.

Senator Breaux. Do they ever talk about why they call it a scheme?

Mr. Ives. It is called the pharmaceutical benefit system. I apologize.

Senator Breaux. It is called a scheme. That is the title.

Mr. Ives. I am sorry.

Senator Breaux. Did they ever mention why they call it that?

Mr. Ives. I do not know why they call it a scheme. It has been in effect for 40 or so years.

Senator Breaux. For 55 years.

Mr. Ives. I am sorry, sir?

Senator Breaux. For 55 years.

Mr. Ives. Under this agreement, we address this system primarily by increasing transparency and accountability of the system. Both the United States and Australia agreed to certain principles, including the importance of innovation, the importance of research and development.

Senator Breaux. Can we do anything to eliminate the scheme?

Mr. Ives. No, sir. It does not eliminate the scheme. It provides the U.S. industry additional ways to affect the listing of medicines on the scheme, which the U.S. industry felt was very important.

The Chairman. Can I follow up on that? This is something I just heard rumor about. I do not know whether it is fact or not. But as a result of the consultation process with the House and Senate, was there any change in our negotiating position and Australia's position on this issue that Senator Breaux brought up from the beginning of the negotiations until we got done as a result of the consultation process?

Mr. Ives. There was one provision that we had in the last round of negotiations. There is a provision that called for Australia to continue its practice of banning the exports of pharmaceutical products that are covered by the PBS. As a result of consultations with your staff and others, we deleted that provision from the text of the agreement.

Mr. Veroneau. That was deleted because it simply reflected Australian law on that point, so the provision in the agreement was not additive. It simply was a restatement of Australia's current law on that issue.

The Chairman. Well, then would you say that there were interests in the United States that were trying to get Australia to change their law to the extent to which it would not impact the pharmaceutical business in the United States?

Mr. Veroneau. Yes. There was considerable interest in this area.

Senator Breaux. So the Australian law prohibits exporting of pharmaceuticals that are operating under the pharmacy benefit scheme?

Mr. Ives. That is correct.

Senator Breaux. All right.

Well, I want to congratulate you all. I mean, I think the whole issue of importing drugs is a trade

problem. I mean, American consumers pay more for drugs because other countries have price controls on the sale of pharmaceuticals in their country.

Therefore, we are doing the research and development, and they are getting the benefit of all of that and control prices through government actions in their countries.

That is why Americans pay more for drugs, because other consumers around the world that we sell to are paying far less than the market price because of government controls.

This is really the first treaty that I think I am aware of that really started to address this huge trade problem in the pharmaceutical area, and I congratulate you for it.

It does not eliminate their pharmacy benefit scheme, but it brings about some transparency and some other requirements, which I think is the way we ought to be aggressively looking at this problem. I congratulate you for that. Thank you.

Thank you, Mr. Chairman.

The Chairman. Yes.

Before Senator Thomas asks a question, could I ask, we are trying to get seven here. We have got two that have temporarily gone to another committee meeting. But

even if we had seven, I would like to have staff ascertain whether there is a chance of getting four more people here. Otherwise, what I suppose we might as well do, is do our amendments, and then do the mark-up off the floor sometime today.

Senator Breaux. We have a bunch of votes.

The Chairman. Yes.

Senator Thomas has a question.

Senator Thomas. Thank you, Mr. Chairman.

I just have a couple of questions to help clarify.

The Chairman. Wait a minute. I think the votes have changed, I got a message, to 1:45.

Go ahead, Senator.

Senator Thomas. I will not take longer than 1:45. [Laughter].

The Chairman. All right.

Senator Thomas. Just to kind of clarify on the brief issue. First of all, there are a number of things here that are very good for my State of Wyoming, soda ash is a thing we worked out, and also the sugar thing.

But I just need some short answers. It is my understanding the safeguard that is on beef is triggered if certain statistical criteria are met. Is that correct?

Mr. Veroneau. Yes, that is correct, Senator.

Senator Thomas. It is also my understanding that safeguard is triggered unless someone affirmatively files a request to seek a waiver. Is that correct?

Mr. Veroneau. That is correct. Yes.

Senator Thomas. It is my understanding that once a request to waive the safeguard is filed, the Private Sector Advisory Committee, the House Ways and Means Committee, and the Finance Committee are notified and consulted. Is that correct?

Mr. Veroneau. That is correct, Senator.

Senator Thomas. Once that process is complete, a decision made by the administration as to whether they should make that decision whether or not the waiver should be granted.

Mr. Veroneau. Yes. We are required to consult both on the scope and the duration of any waiver that we could consider.

Senator Thomas. The decision must be based on the determination that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States.

Mr. Veroneau. Yes. That is the standard, Senator.

Senator Thomas. I would just like to see no waivers available, I suppose. But the fact is, they are pretty limited as to how it can happen. It has to go through a

process to happen. Is that not correct?

Mr. Veroneau. Yes.

Senator Thomas. And so it is really not likely to happen unless it is a great advantage to the United States.

Mr. Veroneau. Thank you for clarifying that, Senator, because there have been some misunderstandings about this waiver. It is extremely difficult to sort of get over those hurdles, both procedural and substantive, that are built in.

So, I think there can be some confidence that there would be very vigorous consultation with the committees, advisors, and interested parties before that could ever be triggered.

Senator Thomas. Australia has been one of our positive countries for trade. We have had a positive trade agreement with them over time, which is good. Our great beef market, which I am very interested in, is available in Asia, but not in Australia. So, it is interesting. But thank you very much. I wanted to clarify those points.

Senator Baucus. I wonder, Mr. Veroneau, if you could just, step by step, go through that process. When is the price-based or the quantity-based triggered, and what are the next steps? Can you go step by step, what

the steps are if the quantity-based or price-based trigger is, in fact, triggered? Then if USTR--or whoever it is, I have forgotten--does attempt to waiver, just all the steps. Just kind of chronologically, if you could go through all that.

Mr. Veroneau. Certainly, Senator.

Senator Baucus. Senator Thomas already asked some specific questions. But, just chronologically, just kind of go through the process.

Mr. Veroneau. Certainly, Senator. First, we would have to fast-forward to nine years from today, because that is when the quantity-based safeguard first is triggered, or could be triggered.

The reason it does not come into effect potentially for nine years is because there is very limited market access liberalization. Tariff reductions do not occur or begin until the ninth year, so there is no need for a safeguard until then.

So, nine years from today, under certain formulas, if quantity exceeds certain levels, then it triggers a formula that would then require an additional duty to be put on it.

So, there would obviously be lots of people watching these trade flows, so there would be considerable, I think, notice that this quantity is going to exceed, or

likely to exceed, these preestablished levels, thereby triggering this automatic safeguard.

In such a circumstance, because the agreement does provide for a waiver of this automatic, there would have to be a request to USTR. USTR, on its own, it is difficult to imagine, would initiate such a process, since we do not have the information. This would presumably be USDA or some private sector industry group that would propose that the safeguard be waived.

Senator Baucus. Might I ask there, who has standing to request a waiver? Could a consumer group? Who has standing to petition?

Mr. Veroneau. That is not, in great detail, defined either in the agreement or in the statement of administration practices. Presumably, it would be any interested party, presumably a consumer group, a producer group, USDA. Those are the types of people that we would envision.

So, they would make a request to the USTR. The USTR is the one that has authority under the statute, or would have authority under the statute, to actually trigger this waiver.

Once that request is made of the USTR, we are required to share that with the trade committees. That was a provision put in at your request, as you know,

Senator. So, we would have to notify you that we have received this request.

Senator Baucus. And what is the standard for the waiver?

Mr. Veroneau. The standard for the waiver is extraordinary conditions that warrant waiving, because waiving would be in the national interest.

So, as Senator Thomas alluded to, this is a pretty high standard. I mean, we call it an automatic safeguard because, unlike all the other safeguards that we have, agricultural safeguards which are discretionary, on this one, the river is flowing down in this direction and it is going to be automatically triggered, this safeguard.

To not do that requires a waiver, turning the boat around and paddling upstream, which, as you know, is not an easy process interagency, et cetera, so there would be lots of notice that there was a request for us to turn the boat around.

Once we notify you that we have received a request, we are then required to consult with you about the scope and duration of this waiver, and then also to consult with our agricultural advisory committees and groups that are established under current law.

So, from my experience, Senator, it is hard to imagine that a period of any less than probably three

weeks could occur between this initial request and ultimately a waiver being put into effect just because of the number of conversations that have to occur and the number of equities that would have to be considered in such a waiver request.

So, we do not want to shy away from the fact that there is a waiver provision in there, but as a practical matter, in light of both the processes and the standard, it will be difficult to achieve and trigger that waiver.

Senator Baucus. I just have one quick question. I know that extraordinary circumstances and national interests are not defined. What is contemplated? What is contemplated in that as to advising to extraordinary circumstances and in the national interest? That sounds like a quite severe standard.

Mr. Veroneau. I do not want to get beyond my knowledge base here, Senator Baucus. My guess is, the hope was that we would have nine years to figure out exactly what that standard would be.

But I think what is contemplated, is the word extraordinary is not used lightly. So, I think the sense would be, there would have to be some market condition that was not a close call, it was something extraordinary that really called for and justified the waiver.

Senator Baucus. Anyway, given the high standard,

plus the other procedures and the time it would take for the so-called waiver to go into effect, it is contemplated there are a lot of protections. In effect, there would be a lot of protections.

Mr. Veroneau. That is correct, Senator.

Senator Baucus. Thank you very much for that explanation.

The Chairman. Before I call on Senator Kyl, as I said just before we started the meeting, when we get seven here--and we have seven here now with Senator Breaux just being outside the room--I would like to do amendments.

Senator Kyl?

Senator Kyl. Thank you, Mr. Chairman. So, let us get to the amendments.

Let me just say this. Thank you for holding this meeting. I think it is important that we proceed with this agreement. It is an important agreement. I was part of the delegation that went to Australia in January and found that the Australians were incredibly cooperative and interested in working with us.

Specifically on the matter that Senator Breaux brought up, I wanted to second what he said. Before this committee got involved, I do not think the issue of pharmaceuticals would have been on the table. We pressed

the case.

The Australians have a lot of political difficulty working with that, but they did work with us and we made some tremendous progress, especially with regard to getting drugs into their market, issues of transparency, their appeal process, and things of that sort, the process issues.

The thing that we could not deal with, that they could not deal with at this time, was the ultimate pricing issue that Senator Breaux and many of the rest of us are very interested in because of the cost shift to American consumers.

But we, I think, have a clear understanding with the Australia representatives that they are willing to talk about those things with us when they have an opportunity next to get together.

In the meantime, significant progress was made on that very important issue and I really appreciate your willingness to move this agreement forward. I think it is very, very important for the relationship between our two countries, and I thank you.

The Chairman. We will turn to amendments now. Any of the amendments that were filed, we would be glad to consider at this point.

I call on Senator Conrad.

Senator Conrad. Thank you, Mr. Chairman. I want to apologize to the Chairman. I am on three committees that are meeting simultaneously, as so often happens here. They have asked me to make a quorum in another one, and the other one is dealing with an issue very critical to my State, a question of how we treat Canadian pesticides. So, I apologize. But I thank the Chairman for this opportunity.

I call up my amendment number two. I will not call up my amendment number one.

Just briefly, I would say to my colleagues, we have been assured repeatedly that there were safeguards here for the beef industry, and indeed there are some safeguards here. But, as I study the safeguards which are automatic under certain conditions, I also find a giant loophole.

The giant loophole is that USTR, acting alone, can waive those safeguards. They can waive those safeguards in cases where they determine that extraordinary market conditions exist that make it in the national interest to waive the safeguard. They only have to provide five days' notice to this committee and then they have the full authority to waive the safeguards.

Mr. Chairman, members of the committee, I do not think that is right. I think, if the fundamental

protection for the beef industry that was sold as a critical part of the agreement is going to be taken away, the Congress--the Congress--should have a say in that decision.

After all, the constitution says it is the Congress of the United States that has the job to regulate foreign commerce and set tariffs, not the USTR. I have great respect for the Trade Ambassador.

I have great respect for USTR. But they ought not to be determining what is the policy of the United States. They are to negotiate. They are to implement the policy. The Congress of the United States is to make the policy.

So, I would hope that we would require that there would be a vote of the Ways and Means Committee and the Finance Committee on any question of a waiver. I think that is our obligation and that is our responsibility.

If a future USTR were to propose a waiver in circumstances where the national interest was not clear or where extraordinary conditions were not present, where the effect on the beef industry could be disastrous, Congress ought to be able to stop the granting of such a waiver. That is what my amendment provides. I urge my colleagues to support it. I thank the Chairman for this time.

The Chairman. I oppose the amendment. I think

Senator Baucus and I have worked very hard in drafting the bill before us to set a very high hurdle for the exercise of discretion for these waivers.

The waivers can only be used if there is a determination, and I quote from the legislation, "extraordinary market conditions demonstrate that a waiver would be in the national interest." I think this is a very high hurdle. The burden is on the proponent of the waiver to prove that extraordinary market conditions exist.

After receiving waiver request, the USTR must notify and consult with Finance Committee, Ways and Means, and even appropriate private sector advisory committees. The notification must take place at least five business days before a waiver takes effect.

So, I think we need to be clear that the rationale for the waiver is not only to provide for the discretionary application called for by the agreement. It also is to provide a mechanism to react to different market conditions that may exist decades from now.

The price-based beef safeguard is unique in the history of American trade law. To my knowledge, we have never before included an automatic price safeguard that remains in effect forever. The waiver provisions reflect the unique nature of this special provision. We should

also consider what signals the amendment would send to our trading partners.

An example. Within the past year, prior to the detection of BSE in America, Japan imposed a safeguards on imports of U.S. beef. Would we really want to depend upon action of the Japanese Diet, their congress, for waiver authority to be exercised?

Finally, I would note that both the administration and the American-Australia Free Trade Coalition are strongly opposed to any amendments to this carefully balanced package.

We have this from the coalition: "We strongly urge the committee to reject all amendments that may be offered during the committee's consideration of the agreement. Forcing a re-negotiation of the agreement at this point would surely delay enactment."

Ambassador Zoellick raised this to the committee, a significant reason why this amendment should not be adopted, the fact that the amendment is unconstitutional. This amendment would alter the waiver authority in the two beef safeguard provisions so that the Finance and Ways and Means Committees would have to affirmatively approve the waiver of the beef safeguard before that waiver could take effect.

While the amendment does not specify how the

committee would approve the amendment, it is unconstitutional for the reason of the *Chadha* case. The *Chadha* decision has two elements.

The first, is the constitutional principle of bicameralism, by which the exercise of legislative power requires action by both Houses and not by just a committee of either House. The amendment also calls for action by the Finance Committee or Ways and Means Committee.

So, the amendment is unconstitutional under *Chadha*. That is because of the second element, exercising legislations, the presentment clause. I disagree with the Chadha amendment when it came down because I was an advocate for single-House veto. But that is not what our constitution says, according to the Supreme Court. So, I ask that we disapprove of this amendment.

Any further discussion?

Senator Conrad. Mr. Chairman?

The Chairman. Yes?

Senator Conrad. Might I just say that we used to have the authority to disapprove fast track. So, that was not determined to be unconstitutional. I do not believe this is unconstitutional.

In fact, the constitution gives the Congress of the United States the role in determining the stance of the

United States with respect to trade. Commerce is reserved to the Congress of the United States, so that is our responsibility.

I do not think we can just turn it over to USTR or any other agency for determination of what the policy of the United States is with respect to a trade issue. That is our obligation.

I believe, if we are going to tell people that there is a safeguard here, it cannot be a safeguard that has got a giant loophole attached to it, a waiver that can be put in place by USTR, with only a requirement that they notify Congress for five days. That does not strike me as a serious protection of an important industry.

So, I would urge my colleagues to support this amendment. It is reasonable. It reserves to the Congress of the United States the determination of policy.

The Chairman. In answer to your question, though, I do have a two-page CRS thing here. Obviously, I do not pretend to be a lawyer, so I relied on their statement about your amendment and in reference to the *Chadha* case, if you want that.

Senator Conrad. Let me just say, Mr. Chairman, if I could, I have got a raft of legal opinions as well that I would be glad to share with you that have come to a

different conclusion. As is so often the case, you get five lawyers and they have got seven opinions.

The Chairman. Well, can we vote now? Those in favor of the amendment by the Senator from North Dakota say aye.

[A chorus of ayes]

The Chairman. Those opposed, say no.

[A chorus of nays]

The Chairman. The nays have it. The amendment is defeated.

Senator Conrad. Mr. Chairman, I think I would like a roll call vote on that.

The Chairman. Well, you can have a roll call vote.

Senator Conrad. I would like to indicate that Senator Bingaman and Senator Lincoln would like to be shown as co-sponsors.

The Chairman. All right.

Senator Conrad. And Senator Daschle, as well.

The Chairman. All right. They will be added as co-sponsors.

Would you call the roll, please?

The Clerk. Mr. Hatch?

Senator Hatch. No.

The Clerk. Mr. Nickles?

The Chairman. No by proxy.

The Clerk. Mr. Lott?
The Chairman. No by proxy.
The Clerk. Ms. Snowe?
Senator Snowe. Aye.
The Clerk. Mr. Kyl?
Senator Kyl. No.
The Clerk. Mr. Thomas?
Senator Thomas. No.
The Clerk. Mr. Santorum?
The Chairman. No by proxy.
The Clerk. Mr. Frist?
The Chairman. No by proxy.
The Clerk. Mr. Smith?
The Chairman. No by proxy.
The Clerk. Mr. Bunning?
The Chairman. No by proxy.
The Clerk. Mr. Baucus?
Senator Baucus. Aye.
The Clerk. Mr. Rockefeller?
Senator Baucus. Aye by proxy.
The Clerk. Mr. Daschle?
Senator Baucus. Aye by proxy.
The Clerk. Mr. Breaux?
Senator Breaux. Aye.
The Clerk. Mr. Conrad?

Senator Conrad. Aye.

The Clerk. Mr. Graham?

The Clerk. Mr. Jeffords?

Senator Baucus. Aye by proxy.

The Clerk. Mr. Bingaman?

Senator Baucus. Aye by proxy.

The Clerk. Mr. Kerry?

Senator Baucus. Aye by proxy.

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Chairman?

The Chairman. No.

The Clerk. Mr. Chairman...

Senator Baucus. Mr. Chairman, Mr. Chairman, Senator Graham votes aye by proxy.

The Clerk: Sen. Graham votes aye by proxy. Mr. Chairman, the tally, with proxies, is 11 ayes, 10 nays.

The Chairman. The amendment is adopted.

Any other amendments?

[No response]

The Chairman. All right. Then what we will do, is we will vote on final passage off the floor. The meeting is adjourned.

[Whereupon, at 10:59 a.m. the meeting was recessed to

wait the call of the chairman.]

I N D E X

PAGE

STATEMENT OF:

THE HONORABLE CHARLES E. GRASSLEY
A United States Senator
from the State of Iowa 2

THE HONORABLE KENT CONRAD
A United States Senator
from the State of North Dakota 7

THE HONORABLE MAX BAUCUS
A United States Senator
from the State of Montana 10

THE HONORABLE OLYMPIA SNOWE
A United States Senator
from the State of Maine 14

Gilmour
46 pp.
6-23-04

STATEMENT FOR SENATOR BUNNING
SENATE COMMITTEE ON FINANCE
Implementation of Free Trade Agreements with Australia
23 June 2004

THANK YOU, MR. CHAIRMAN.

AS I HAVE EXAMINED THE DETAILS OF THE AGREEMENT BEFORE US TODAY, I HAVE BEEN QUITE PLEASED WITH ONE PARTICULAR ASPECT OF THE AGREEMENT – THAT THE RATE OF TARIFF REDUCTIONS AGREED TO BY EACH PARTY ARE IMPLEMENTED ON VERY SIMILAR AND COORDINATED TIME SCHEDULES. THIS FACT IS IN HAPPY CONTRAST TO SOME PREVIOUS TRADE AGREEMENTS THAT I HAVE HAD THE OPPORTUNITY TO EXAMINE DURING MY LONG CONGRESSIONAL CAREER.

ALL TOO OFTEN, I HAVE FOUND AGREEMENTS THAT APPEAR TO GRANT FULL ACCESS TO THE STRONG AND LARGE AMERICAN MARKETPLACE WHILE LIMITING RECIPROCAL ACCESS FOR AMERICAN EXPORTS.

IMPORTANT TO MY STATE OF KENTUCKY IS THE FACT THAT THIS AGREEMENT TREATS THE EXPORTATION OF TOBACCO PRODUCTS LIKE OTHER COMMODITIES.

I WAS PARTICULARLY PLEASED TO SEE THAT THE REPORT OF THE AGRICULTURAL TECHNICAL ADVISORY COMMITTEE FOR COTTON, PEANUTS, PLANTING SEEDS AND TOBACCO, WHICH INCLUDED AS A MEMBER MR. MARSHALL COYLE OF THE KENTUCKY FARM BUREAU, FOUND THESE AGREEMENTS TO BE FAIR REGARDING TOBACCO TRADE. I HOPE AND EXPECT THAT THIS WILL CONTINUE TO BE THE CASE WITH ANY OTHER TRADE AGREEMENTS THAT THIS COMMITTEE IS ASKED TO EXAMINE.

I WAS ALSO PLEASED TO SEE THAT, AS PART OF THIS AGREEMENT, AUSTRALIA HAS AGREED TO ELIMINATE ITS 5% TARIFF ON DISTILLED SPIRITS IMPORTED FROM AMERICA. AS YOU KNOW, THE BOURBON INDUSTRY IS AN IMPORTANT PART OF KENTUCKY'S HERITAGE AND ITS MODERN ECONOMY, WITH THE KENTUCKY BOURBON INDUSTRY EMPLOYING OVER 30,000 WORKERS AND CONTRIBUTING HUNDREDS OF MILLIONS OF DOLLARS TO THE STATE ECONOMY.

THE COMBINATION OF THE ELIMINATION OF THIS *AD VALOREM* TAX AND THE RECOGNITION UNDER THE AGREEMENT THAT ONLY SPIRITS PRODUCED IN THE UNITED STATES, IN ACCORDANCE WITH THE LAWS AND REGULATION OF THE U.S., MAY BE SOLD IN AUSTRALIA AS BOURBON, ENSURE THAT THIS AGREEMENT HAS THE POTENTIAL TO GREATLY EXPAND EXPORT OPPORTUNITIES FOR THIS IMPORTANT KENTUCKY PRODUCT.

I APPRECIATE THE EFFORTS THAT THE ADMINISTRATION HAS MADE TO WORK CLOSELY WITH THIS COMMITTEE AS THE NEGOTIATION OF THIS AGREEMENT HAS DEVELOPED DURING THE LAST FEW MONTHS. AS I HAVE STATED IN THE PAST, OUR TRADE REPRESENTATIVES MUST CONTINUE TO PUSH FOR – AND TO REQUIRE – MARKET ACCESS FOR OUR EXPORTED GOODS. I EXPECT THIS TO BE THE OVER-REACHING THEME IN ALL OF OUR TRADE NEGOTIATIONS AND IT APPEARS THAT THE AGREEMENT BEFORE US TODAY MEETS THIS CRITERIA.

IF, AS EXPECTED, MORE FREE TRADE AGREEMENTS COME BEFORE THIS COMMITTEE OVER THE COMING MONTHS, I WILL EXAMINE EACH OF THEM IN LIGHT OF THESE SAME CRITERIA.

THANK YOU.



Statement by Senator James M. Jeffords
U.S. – Australia Free Trade Agreement Considered by Finance Committee
June 23, 2004

Mr. Chairman,

While I have misgivings about the appropriateness of removing trade barriers in some instances, I believe that Australia is one of the better cases for a free trade agreement.

Like Canada, Australia is a developed economy with a strong environmental and worker rights protections, clear legal guidelines and protections for intellectual property rights. Unlike Canada, there will be a natural limitation on the amount of trade with Australia imposed by the distance between our countries. Notwithstanding the distance, it is estimated that the potential exists for over $2 billion a year in American exports to Australia.

This potential for trade proves the old adage that the world continues to shrink in size! Distance no longer prevents commerce where strong economic ties and sound policies encourage trade. When two countries compete as equals on a level playing field, the interaction quickly becomes a benefit to both countries. This is my expectation for the future of U.S. – Australian trade relations.

As in all complicated negotiated agreements, the devil is in the details. Such as been the case for the dairy provisions of this agreement. I believe the final version of the U.S.-Australia Free Trade Agreement is vastly improved from earlier drafts, which would have seriously threatened dairy farmers in Vermont, and across the country. In the early stages of the negotiations, I heard from a number of dairy farmers who opposed the agreement. Knowing this, I joined a bipartisan group of 30 Senators in a letter to the chief US trade negotiator, Ambassador Robert Zoellick, expressing our concerns for our nation's dairy farmers. I am glad that these concerns were taken into account and the agreement was improved.

While the agreement will allow some Australian dairy products to enter the U.S. market, the volume of imports will be limited to a small percentage of U.S. domestic production. I am also glad the negotiators were able to retain over-quota tariffs for dairy products at MFN level, which was the top priority of the U.S. dairy industry. Although I would have preferred to have dairy excluded from the agreement altogether, I believe the interests of our dairy farmers are adequately addressed.

My State of Vermont has become a strong player on the international trade scene. Quality products, creative engineering and clever marketing, have earned Vermont a secure place in the international market. We will continue to benefit from the opening of more markets for Vermont's products. Having secured guarantees that Vermont's vulnerable dairy industry will not be unfairly impacted, I am glad to vote in favor of this agreement. I look forward to seeing this agreement benefit small businesses in Vermont, and across the nation, who are looking to expand their export markets.

Thank you.

Congressional Research Service

Memorandum June 22, 2004

TO: Senate Committee on Finance
Attention: Stephen Schaefer

FROM: Johnny H. Killian
Senior Specialist, American Constitutional Law
American Law Division

SUBJECT: Validity of Provision Conditioning Executive Action on Congressional Committee Approval

---

This memorandum is in response to your request to review a provision proposed to be added to the Australian FTA. The particular sections authorize quantity and price-based safeguards on beef whenever certain conditions apply. The sections provide for USTR waivers of application of the safeguards "if the Trade Representative determines that extraordinary market conditions demonstrate that a waiver would be in the national interest of the United States" and USTR consults with private sector advisors and the Finance and Ways and Means Committees. The proposed amendment would add a requirement that the Senate Finance Committee and the House Ways and Means Committee both affirmatively approve a proposed waiver before USTR can waive the application of the safeguards.

There is a constitutional difficulty with the committee approval device, which flows from the decision in *INS v. Chadha*, 462 U.S. 919 (1983). In that case, the Court held unconstitutional a provision of the immigration laws that authorized either the Senate or the House of Representatives, by simple resolution, to disapprove the decision of the Attorney General to allow a particular deportable alien to remain in the country. The infirmity of the provision, according to the Court, was that "the exercise[s] of legislative power" by Congress or by one House had to comply with the Constitution's lawmaking prescription under Article I, § 1 and Article I, § 7, that is, passage by both Houses and presentment to the President for his approval or veto. In order to determine whether a congressional action is an exercise of legislative power, one must look to see if "it ha[s] the purpose and effect of altering the legal rights, duties and relations of persons, including [in this case] the Attorney General, Executive Branch officials and Chadha, all outside the legislative branch." Id., 952.

Although *Chadha* concerned a one-House simple resolution, the analysis of the Court made clear that two-House vetoes, with regard to presentment, and committee veto devices suffered from the same constitutional difficulty. (Needless to say, no constitutional significance attaches to whether the device is cast as a veto or a necessary approval). And,

indeed, the Court shortly thereafter summarily affirmed two decisions by the District of Columbia Circuit, which had acted pre-*Chadha*, striking down two-House vetoes. *Process Gas Consumers Group v. Consumer Energy Council*, 463 U.S. 1215 (1983), *summarily affg.* 691 F.2d 575 (D.C.Cir., 1982)(*en banc*), and 673 F.2d 425 (D.C.Cir., 1982). Although the Supreme Court has not passed on a provision giving congressional committees veto power or necessary approval like that contained in the proposed amendment, the D. C. Circuit, contemporaneously with the two cited cases, invalidated a section of an appropriations law largely identical to the proposal. *AFGE v. Pierce*, 697 F.2d 303 (D.C.Cir., 1982)(panel composed of now-Justice Ginsburg and Judges Bork and Bazelon).

In *Pierce*, the court had before it a limitation on the use of funds in an HUD Appropriations Act to implement a RIF "without the prior approval of the Committees on Appropriations." According to the court, the provision could be interpreted in one or another of two ways. First, it could be read to empower either Appropriations Committee to prevent otherwise authorized expenditures of funds. Second, it could be read as prohibiting the agency from using appropriated funds for certain purposes but empowering both Committees, acting together, to lift the prohibition and to authorize the agency to make such use of the funds. Under either construction, the court stated, the provision was unconstitutional. If the first reading was correct, the section conferred a one-House veto on the Committees; if the second reading prevailed, the directive was a grant of legislative power to the two Committees. Legislative power, either way, had to be exercised bicamerally and through presidential presentment.

Little doubt exists that *Chadha* confirms the D. C. Circuit's analysis of such committee provisions of law.

Now, it is true that Congress has not foresworn use of legislative veto devices in the aftermath of *Chadha*. By one authoritative but now dated count, "Congress [has] enacted more than two hundred new legislative vetoes." Fisher, *The Legislative Veto: Invalidated, It Survives*, 56 L. & Contemp. Prob. 273, 288 (1993). Most of these provisions of law are authorizations to committees, often the Appropriations Committees, to approve certain executive expenditures before they can take place. Id., 288, n. 83. Because of the comity the agencies must display to the Appropriations Committees, these provisions are rarely challenged, certainly not in court. However, Presidents in signing statements have typically complained about the measures and announced their intentions to ignore them. The format of these presidential statements usually follow one highlighted by Dr. Fisher of President George H. W. Bush. The President protested that the sections "constitute legislative vetoes similar to those declared unconstitutional by the Supreme Court in *INS v. Chadha*. Accordingly, I will treat them as having no legal force or effect in this or any other legislation in which they appear." 27 Weekly Comp. Pres. Docs. 1525 (Oct. 28, 1991).

In most instances, disputes between Congress and Executive over the use of such devices may fail to give rise to litigation, or, at least, litigation that enables court to reach the merits, because of the absence of Member standing, cf. *Raines v. Byrd*, 521 U.S. 811 (1997), and the lack of standing by private parties, and there will be political accommodation. But regardless of the justiciability of the question in any particular case, the amendment before us now certainly appears to meet the judicial definition of an impermissible exercise of legislative power and to be subject to invalidation in the event of a suit in which the merits are reached.



Maine
Dairy
Industry
Association

June 18, 2004

Senator Olympia J. Snowe
United States Senate
Washington, DC 20510

Dear Senator Snowe,

On behalf of the 392 dairy farmers operating small businesses in Maine, I thank you for your support of the dairy industry and Maine agriculture. You have consistently been a strong advocate for us and we are proud of your steady leadership in Congress.

Dairy farming is a difficult profession. The cows work 365 days a year regardless holidays, weekends or illness. The weather cannot be made to order. And farmers have very little to say about what they will get paid for their milk, regardless of the quality, quantity or freshness. In spite of these challenges, Maine has a strong dairy farming tradition and our farmers are proud to produce over 50 million gallons of milk (605 million pounds) every year to Maine consumers. Milk is a bulky, perishable product. When it is processed it can be made into products that have a longer shelf life.

Milk pricing is an incredible complex series of market calculations. Dairy products are divided into four categories of prices. Class I included fluid milk for drinking and drinkable yogurt. Class II covers soft products, such as yogurt, sour cream, ice cream and cottage cheese and other soft cheeses. Class III includes the hard cheeses. Class IV covers butter and powder products, such as whey powder, powdered milk and other dried byproducts. Farmers are paid a blend price based on the products that their milk was used to process. The price for fluid milk tends to be the highest, dropping through the classes with the lowest usually Class IV.

Milk is priced on the commodity market, responding to shifting trends of supply and demand that are measured on a nationwide scale. When the ration between supply and demand shifts 1-2% one way or the other, the price the federal order sets for the farmer to get paid (by setting the class prices) can shift 20-30%. If you mapped out the average prices for a year on a chart, it would look more like a roller coaster ride than government-controlled pricing structure. And dairy farmers are only told what price they will be paid for their milk AFTER they have sent it to market.

PO Box 5013 * Augusta, ME 04330 * (207) 798-5544 * mainedairy@aol.com

Consequently, any shift in national consumption or production can result is dramatic changes to the farmer. It is for this reason that we have been very concerned about the details of the Australian Free Trade Agreement.

Australia and New Zealand are two of the world's largest producers and exporters of milk protein concentrates (MPCs), which are dried byproducts of milk that can be used in prepackaged mixes and in the production of some types of cheese. MPCs are considered one of the lowest value products in terms of price for the farmer. Until this year, there were no manufacturing facilities producing MPCs because of their low market value and because fresh (non dried/non processed) milk byproducts were available to US processors for cheese and powdered milk was available for mixes. There is one plant that recently opened in New Mexico to produce MPCs in an effort to for the US dairy industry to compete against foreign imports.

However, MPCs are a cause for serious concern. First of all, because they are one of the last products to be made from milk, their total nutritional content and composition have raised issues with the US Food and Drug Administration, who monitors and sets the standards for what can be construed a dairy product. The FDA pursued administrative actions against a cheese processor in the US, arguing that there product did not meet the guidelines for a dairy food because of the high volume of MPCs used in its manufacturing. The processor was ordered to reduce the amount of MPCs used and make up the difference by purchasing fresh milk product. Since the fresh product costs more than the low value MPCs, the processor was not pleased, but dairy farmers were.

The second reason to be concerned about imported MPCs flooding the US manufacturing marketplace is because of pricing. When processors opt to use imported MPCs, they are using them instead of the fresh domestic byproducts of milk. This lowers the demand for milk overall and leads to a drop in the prices paid to farmers.

Having a greater supply of US milk than a demand for US consumption has historically caused major upheaval in the dairy industry. After September 11, 2001 people were eating out in restaurants less. They were staying home and eating frozen or prepackaged food rather than take out meals. A good example of why this has a major impact on the supply and demand pricing system for dairy is the difference between pizzeria pizza in a restaurant and frozen pizza. When you go to a pizza parlor, cheese is the number one topping put on pizza and most places go out of their was to be known for putting lots of cheese on their pizzas. Manufacturers of frozen pizzas tend to put significantly less cheese on their pizza because cheese is a difficult product to freeze. Because of the high natural water content in cheese, if you put the same amount of cheese on a frozen pizza as they do at a restaurant, when you thaw the pizza and cook it, the result is a soggy, less pleasing product. By December 2001, the demand for dairy products had dropped over 2%, resulting in the beginning of some of the longest sustained low prices for dairy farmers in the at least the last 30 years. Because of those 28 months of low prices, many farms across this county went out of business, including 68 in Maine, a loss of over 15% of the total dairy farms.

The price has only started to rebound this year. MDIA joins with farmers across the nation in being concerned that a rapid influx of foreign MPCs could supplant the domestic milk supply, resulting in another imbalance that could drive the price back down. While Maine dairy farmers as a whole were able to hang on and maintain a viable industry through the difficult period since 2001, any further loss of Maine dairy farms could threaten the business infrastructure that supports all of Maine's agricultural producers. The feed, equipment and fertilizer dealers, the veterinarians, the milk truck haulers, the agricultural specialty businesses all need a strong dairy industry in order to keep supplying products and services not only to the remaining dairy farmers, but to the potato, blueberry, apple, beef and other agricultural producers that contribute to Maine's economy. In fact, the economic impact of the whole dairy industry, which included everyone from the farmer up through the infrastructure businesses to the Maine processing plants provides over $570 million annually to the Maine economy. On top of that, they provide over $25 million in state and local taxes every year. The dairy industry employs over 4,000 people, who are paid and then circulate those dollars through the economy. The loss of this industry could prove catastrophic to the Maine's economy, especially in the rural parts of the state where people are already struggling to maintain economic stability.

We strongly urge that you continue to fight to make sure that the importation of MPCs from Australia and New Zealand are phased in very gradually and very slowly to minimize the overall impact of the supply and demand ratio, resulting in a more stable price for US farmers.

Without the dairy farmer, we would not have fresh milk. In order to keep our farms, dairy farmers need to be paid a fair and stable price for their milk. We need a vibrant, diversified dairy industry peppered throughout this country, not concentrated in a few areas or relying on imported products. Today, we have one in Maine. Protecting this nation's dairy farmers by limiting the importation of foreign MPCs in the Australian Free Trade Agreement could help insure that we will continue to enjoy quality Maine milk for generations to come.

Thank you again for your support.

Sincerely,



Dale Cole
President
Maine Dairy Industry Association

PO Box 5013 * Augusta, ME 04330 * (207) 798-5544 * mainedairy@aol.com

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

The Honorable Charles Grassley
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

JUN 22 2004

Dear Mr. Chairman:

I understand that an amendment may be offered during the mark-up of the proposed draft bill implementing the United States-Australia Free Trade Agreement (FTA) related to the operation of the beef safeguards under the FTA. We oppose any amendment that would effectively eliminate the discretion called for in the Agreement not to apply these safeguards.

Agriculture safeguard language in the WTO Agriculture Agreement and our other FTAs has an element of discretion that applies in all cases. These existing agreements would provide, for example, that "A Party may apply a safeguard...".

In the U.S.-Australia FTA, the United States insisted on a different approach for the beef safeguards in order to achieve more automatic application of the two beef safeguards and to provide greater certainty to the U.S. beef industry and the Congress on this issue. The FTA requires automatic application of the beef safeguards, but also provides that the United States must have the discretion not to apply a safeguard. This is a reasonable approach, particularly since it is nearly impossible to project conditions in the U.S. beef market in 9 years when the quantity-based safeguard goes into effect or in 19 years when the price-based safeguard goes into effect.

We plan to implement these more stringent safeguards in the following way. The quantity-based and price-based beef safeguards will be applied automatically. The quantity-based safeguard will be incorporated as specific tariff lines in the U.S. Harmonized Tariff Schedule. We plan for the price-based beef safeguard to be triggered electronically through data transmission between the Department of Agriculture and U.S. customs officials.

Under the proposed legislation, the United States Trade Representative (USTR) is authorized to waive application of the quantity-based and price-based beef safeguards only if the USTR determines that extraordinary market conditions demonstrate that a waiver would be in the national interest of the United States. We would expect such situations to be rare. USTR would notify the Senate Finance Committee and the Ways and Means Committee of the House (Trade Committees) of any request for a waiver and consult with private sector advisors and the Trade Committees regarding the scope and duration of any proposed waiver. These consultations would take place at least 5 working days before a waiver would go into effect.

Eliminating the waiver provisions for the quantity and price-based safeguards would preclude the United States from exercising the discretion required under the Agreement. Requiring

Congressional approval to waive the beef safeguards would make the waiver unworkable due to the delay that this would introduce and raises serious Constitutional issues under INS vs Chada. If the United States does not have the discretion not to apply a beef safeguard measure, or if a waiver process is unworkable, Australia could argue that the United States is in violation of the Agreement or has nullified or impaired its rights under the Agreement.

I appreciate your strong support for the U.S.-Australia FTA and look forward to working with you on implementation of this FTA, the U.S.-Morocco Free Trade Agreement, and other Agreements.

Sincerely,

Robert B. Zoellick

108TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

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

A BILL

To implement the United States-Australia Free Trade Agreement.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "United States-Australia Free Trade Agreement Implementation Act".

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

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

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

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

TITLE II—CUSTOMS PROVISIONS

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

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

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

Subtitle B—Textile and Apparel Safeguard Measures

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

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

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

TITLE IV—PROCUREMENT

Sec. 401. Eligible products.

SEC. 2. PURPOSES.

The purposes of this Act are—

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

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

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

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

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the United States-Australia Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

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

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

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

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

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

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

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on [_____, 2004].

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

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

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

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

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

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

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

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

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

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

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

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

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

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

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

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

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

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

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

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

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

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

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

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

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

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

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

(B) the United States International Trade Commission;

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

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

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

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

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

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be

responsible for providing administrative assistance to panels established under chapter 21 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 21 of the Agreement.

SEC. 106. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force.

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

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

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

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

(1) such modifications or continuation of any duty,

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

(3) such additional duties,

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

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

(1) such modifications or continuation of any duty,

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

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

(4) such additional duties,

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

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 2–B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) GENERAL PROVISIONS.—

(1) APPLICABILITY OF SUBSECTION.—This subsection applies to additional duties assessed under subsections (b), (c), and (d).

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

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

for preferential treatment, at the time the additional duty is imposed under subsection (b), (c), or (d), as the case may be; or

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

(3) SCHEDULE RATE OF DUTY.—For purposes of subsections (b) and (c), the term "schedule rate of duty" means, with respect to a safeguard good, the rate of duty for that good set out in the Schedule of the United States to Annex 2–B of the Agreement.

(4) SAFEGUARD GOOD.—In this subsection, the term "safeguard good" means—

(A) a horticulture safeguard good described subsection (b)(1)(B); or

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

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

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

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

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

(7) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under subsection (b), (c), or (d), the Secretary shall notify the Government of Australia in writing of such action and shall provide to that Government data supporting the assessment of the additional duty.

(b) ADDITIONAL DUTIES ON HORTICULTURE SAFEGUARD GOODS.—

(1) DEFINITIONS.—In this subsection:

(A) F.O.B.—The term "F.O.B." means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(B) HORTICULTURE SAFEGUARD GOOD.—The term "horticulture safeguard good" means a good—

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

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

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

(C) UNIT IMPORT PRICE.—The "unit import price" of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement.

(D) TRIGGER PRICE.—The "trigger price" for a good is the trigger price indicated for that good in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement or any amendment thereto.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section, the Secretary of the Treasury shall assess a

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

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

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

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

(1) DEFINITION.—In this subsection, the term "beef safeguard good" means a good—

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

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

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

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) and (5) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (3), on a beef safeguard good imported into the United States in a calendar year if the Secretary determines that, prior to such importation, the total volume of beef safeguard goods imported into the United States in that calendar year is equal to or greater than 110 percent of the volume set out for beef safeguard goods in the corresponding year in the table contained in paragraph 3(a) of Annex I of the General Notes to the Schedule of the United States to Annex 2–B of the Agreement. For purposes of this subsection, the years 1 through 19 set out in the table contained in paragraph 3(a) of such Annex I correspond to the calendar years 2005 through 2023.

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

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

(4) WAIVER.—

(A) IN GENERAL.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) NOTICE AND CONSULTATIONS.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

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

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

and the Committee on Finance of the Senate regarding—

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

(II) the proposed scope and duration of the waiver.

(C) NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

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

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

(1) DEFINITIONS.—In this subsection:

(A) BEEF SAFEGUARD GOOD.—The term "beef safeguard good" means a good—

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

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

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

(B) CALENDAR QUARTER.—

(i) IN GENERAL.—The term "calendar quarter" means any 3-month period beginning on January 1, April 1, July 1, or October 1 of a calendar year.

(ii) FIRST CALENDAR QUARTER.—The term "first calendar quarter" means the calendar quarter beginning on January 1.

(iii) SECOND CALENDAR QUARTER.—The term "second calendar quarter" means the calendar quarter beginning on April 1.

(iv) THIRD CALENDAR QUARTER.—The term "third calendar quarter" means the calendar quarter beginning on July 1.

(v) FOURTH CALENDAR QUARTER.—The term "fourth calendar quarter" means

the calendar quarter beginning on October 1.

(C) MONTHLY AVERAGE INDEX PRICE.—The term "monthly average index price" means the simple average, as determined by the Secretary of Agriculture, for a calendar month of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1–3 Central U.S. 600–750 lbs., or its equivalent, as such simple average is reported by the Agricultural Marketing Service of the Department of Agriculture in Report LM—XB459 or any equivalent report.

(D) 24-MONTH TRIGGER PRICE.—The term "24-month trigger price" means, with respect to any calendar month, the average of the monthly average index prices for the 24 preceding calendar months, multiplied by 0.935.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) through (6) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph

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

(A)(i) the good is imported in the first calendar quarter, second calendar quarter, or third calendar quarter of a calendar year; and

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

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

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

(II) the monthly average index price, in any of the 4 calendar months preceding January 1 of the succeeding calendar year, is less than the 24-month trigger price.

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

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

(A) the quantity of goods of Australia eligible to enter the United States in that year specified in Additional United States Note 3 to Chapter 2 of the HTS; and

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

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

(5) WAIVER.—

(A) IN GENERAL.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) NOTICE AND CONSULTATIONS.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

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

(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

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

(II) the proposed scope and duration of the waiver.

(C) NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.—Upon granting a waiver under this paragraph, the Trade Representative shall

promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

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

SEC. 203. RULES OF ORIGIN.

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

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

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

(3) COST OR VALUE.—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Australia or the United States).

(b) ORIGINATING GOODS.—For purposes of this Act and for purposes of implementing the preferential treatment provided for under the Agreement, a good is an originating good if—

(1) the good is a good wholly obtained or produced entirely in the territory of Australia, the United States, or both;

(2) the good—

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

(i) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4–A or Annex 5–A of the Agreement;

(ii) the good otherwise satisfies any applicable regional value-content requirement referred to in Annex 5–A of the Agreement; or

(iii) the good meets any other requirements specified in Annex 4–A or Annex 5–A of the Agreement; and

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

(3) the good is produced entirely in the territory of Australia, the United States, or both, exclusively from materials described in paragraph (1) or (2); or

(4) the good otherwise qualifies as an originating good under this section.

(c) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

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

(A) the value of all nonoriginating materials that—

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

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

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

(B) the good meets all other applicable requirements of this section; and

(C) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement for the good.

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

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

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

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

(D) A nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, or in heading 1512, 1514, or 1515.

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

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

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

(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) TEXTILE AND APPAREL GOODS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4–A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that com-

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

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

(C) YARN, FABRIC, OR FIBER.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term "component of the good that determines the tariff classification of the good" means all of the fibers in the yarn, fabric, or group of fibers.

(d) ACCUMULATION.—

(1) ORIGINATING MATERIALS USED IN PRODUCTION OF GOODS OF OTHER COUNTRY.—Originating materials from the territory of Australia or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of the other country.

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

(e) REGIONAL VALUE-CONTENT.—

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

(2) BUILD-DOWN METHOD.—

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

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

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term "AV" means the adjusted value of the good.

(iii) VNM.—The term "VNM" means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(3) BUILD-UP METHOD.—

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

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

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term "AV" means the adjusted value of the good.

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

(4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE GOODS.—

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

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

(B) DEFINITIONS.—In subparagraph (A):

(i) AUTOMOTIVE GOOD.—The term "automotive good" means a good provided for in any of subheadings 8407.31 through 8407.34, subheading 8407.20, heading 8409, or in any of headings 8701 through 8708.

(ii) RVC.—The term "RVC" means the regional value-content of the automotive good, expressed as a percentage.

(iii) NC.—The term "NC" means the net cost of the automotive good.

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

(C) MOTOR VEHICLES.—

(i) BASIS OF CALCULATION.—For purposes of determining the regional value-content under subparagraph (A) for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula contained in subparagraph (A), over the producer's fiscal year—

(I) with respect to all motor vehicles in any one of the categories described in clause (ii); or

(II) with respect to all motor vehicles in any such category that are exported to the territory of the United States or Australia.

(ii) CATEGORIES.—A category is described in this clause if it—

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

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

(II) is the same class of motor vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated; or

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

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

(i) average the amounts calculated under the formula contained in subparagraph (A) over—

(I) the fiscal year of the motor vehicle producer to whom the automotive goods are sold,

(II) any quarter or month, or

(III) its own fiscal year,

if the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

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

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

(E) CALCULATING NET COST.—Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the automotive good under subparagraph (B) shall be calculated by—

(i) calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing

and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(f) VALUE OF MATERIALS.—

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

(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material;

(B) in the case of a material acquired in the territory in which the good is produced, the value, determined in accordance with Articles 1 through 8, article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, as set forth in regulations promulgated by the Secretary of the Treasury providing for the application of such Articles in the absence of an importation; or

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

(i) all expenses incurred in the production of the material, including general expenses; and

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

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

(A) ORIGINATING MATERIAL.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Australia, the United States, or both, to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the

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

(B) NONORIGINATING MATERIAL.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Australia, the United States, or both, to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

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

(v) The cost of originating materials used in the production of the nonoriginating material in the territory of Australia, the United States, or both.

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

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

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

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5–A of the Agreement.

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

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

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(h) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term "inventory management method" means—

(i) averaging;

(ii) "last-in, first-out";

(iii) "first-in, first-out"; or

(iv) any other method—

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

(II) otherwise accepted by that country.

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

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

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

(j) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers for shipment shall be disregarded in determining whether—

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

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

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

(l) THIRD COUNTRY OPERATIONS.—A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Australia or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or

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

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

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term "adjusted value" means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the good from the country of exportation to the place of importation.

(2) CLASS OF MOTOR VEHICLES.—The term "class of motor vehicles" means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90.

(B) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90.

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

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

(3) FUNGIBLE GOOD OR FUNGIBLE MATERIAL.—The term "fungible good" or "fungible material" means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

(4) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term "generally accepted accounting principles" means the recognized consensus or substantial authoritative support in the territory of Australia or the United States, as the case may be, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(5) GOOD WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF AUSTRALIA, THE UNITED STATES, OR BOTH.—The term "good wholly obtained or produced entirely in the territory of Australia, the United States, or both" means—

(A) a mineral good extracted in the territory of Australia, the United States, or both;

(B) a vegetable good, as such goods are provided for in the HTS, harvested in the territory of Australia, the United States, or both;

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

(D) a good obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of Australia, the United States, or both;

(E) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Australia or the United States and flying the flag of that country;

(F) a good produced exclusively from products referred to in subparagraph (E) on board factory ships registered or recorded with Australia or the United States and flying the flag of that country;

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

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

(I) waste and scrap derived from—

(i) production in the territory of Australia, the United States, or both; or

(ii) used goods collected in the territory of Australia, the United States, or both, if such goods are fit only for the recovery of raw materials;

(J) a recovered good derived in the territory of Australia or the United States from goods that have passed their life expectancy, or are no longer usable due to defects, and utilized in the territory of that country in the production of remanufactured goods; or

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

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

(ii) from the derivatives of goods referred to in clause (i),

at any stage of production.

(6) INDIRECT MATERIAL.—The term "indirect material" means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the mainte-

nance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

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

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

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

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

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

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

(8) MATERIAL THAT IS SELF-PRODUCED.—The term "material that is self-produced" means an originating material that is produced by a producer of a good and used in the production of that good.

(9) MODEL LINE.—The term "model line" means a group of motor vehicles having the same platform or model name.

(10) NONALLOWABLE INTEREST COSTS.—The term "nonallowable interest costs" means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the country (whether Australia or the United States).

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

(12) PREFERENTIAL TREATMENT.—The term "preferential treatment" means the customs duty rate, and the treatment under article 2.12 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

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

(14) PRODUCTION.—The term "production" means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(15) REASONABLY ALLOCATE.—The term "reasonably allocate" means to apportion in a manner that would be appropriate under generally accepted accounting principles.

(16) RECOVERED GOODS.—The term "recovered goods" means materials in the form of individual parts that result from—

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

(B) the cleaning, inspecting, or testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

(17) REMANUFACTURED GOOD.—The term "remanufactured good" means an industrial good that is assembled in the territory of Australia or the United States, that is classified under chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032, other than a good classified under heading 8418 or 8516 or any of headings 8701 through 8706, and that—

(A) is entirely or partially comprised of recovered goods;

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

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

(18) TOTAL COST.—The term "total cost" means all product costs, period costs, and other costs for a good incurred in the territory of Australia, the United States, or both.

(19) USED.—The term "used" means used or consumed in the production of goods.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

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

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

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of

chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Australia pursuant to article 4.2.5 of the Agreement; and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

SEC. 204. CUSTOMS USER FEES.

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

"(14) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States-Aus-

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

SEC. 205. DISCLOSURE OF INCORRECT INFORMATION.

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

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following new paragraph:

"(8) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT.—

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

"(B) TIME PERIODS FOR MAKING CORRECTIONS.—In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.".

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

(a) ACTION DURING VERIFICATION.—

(1) IN GENERAL.—If the Secretary of the Treasury requests the Government of Australia to conduct a verification pursuant to article 4.3 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

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

(A) that an exporter or producer in Australia is complying with applicable customs laws, regulations, procedures, requirements, or

practices affecting trade in textile or apparel goods; or

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

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

(ii) is a good of Australia,

is accurate.

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

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

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that

the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

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

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

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

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

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

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

verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

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

SEC. 207. REGULATIONS.

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

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

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

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

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

As used in this title:

(1) AUSTRALIAN ARTICLE.—The term "Australian article" means an article that qualifies as an originating good under section 203(b) of this Act.

(2) AUSTRALIAN TEXTILE OR APPAREL ARTICLE.—The term "Australian textile or apparel article" means an article—

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

(B) that is an Australian article.

(3) COMMISSION.—The term "Commission" means the United States International Trade Commission.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

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

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been

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

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

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

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

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

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (i).

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

SEC. 312. COMMISSION ACTION ON PETITION.

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

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

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

affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930) (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

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

1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

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

(c) NATURE OF RELIEF.—

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

(A) The suspension of any further reduction provided for under Annex 2–B of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

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

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

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

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

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

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 9.2.7 of the Agreement) of such relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

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

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

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

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is 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 action taken under subsection (a) is to terminate, the Commission shall conduct an in-

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

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 4 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article—

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

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the applicable NTR (MFN) rate of duty for that article set out in the Schedule of the United States to Annex 2–B of the Agreement; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 2–B of the Agreement for the elimination of the tariff.

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

(1) is subject to—

(A) import relief under subtitle B; or

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

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

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

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

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

but for this subsection, terminate under subsection (a) or (b), if the President determines that Australia has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

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

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

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

(1) by striking "and"; and

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

Subtitle B—Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

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

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

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

(c) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.—If a positive determination is made under section 321(c), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, an Australian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market

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

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious

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

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

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

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

(c) CRITICAL CIRCUMSTANCES.—

(1) PRESIDENTIAL DETERMINATION.—When a request filed under section 321(a) contains an allegation of critical circumstances and a request for provisional relief under section 321(b), the President shall, not later than 60 days after the request is filed, determine, on the basis of available information, whether—

(A) there is clear evidence that—

(i) imports from Australia have increased as the result of the reduction or

elimination of a customs duty under the Agreement; and

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

(B) delay in taking action under this subtitle would cause damage to that industry that would be difficult to repair.

(2) EXTENT OF PROVISIONAL RELIEF.—If the determinations under subparagraphs (A) and (B) of paragraph (1) are affirmative, the President shall determine the extent of provisional relief that is necessary to remedy or prevent the serious damage. The nature of the provisional relief available shall be the relief described in subsection (b)(2). Within 30 days after making affirmative determinations under subparagraphs (A) and (B) of paragraph (1), the President, if the President considers provisional relief to be warranted, shall provide, for a period not to exceed 200 days, such provisional relief that the President considers necessary to remedy or prevent the serious damage.

(3) SUSPENSION OF LIQUIDATION.—If provisional relief is provided under paragraph (2), the President shall order the suspension of liquidation of all imported articles subject to the affirmative determinations under subparagraphs (A) and (B) of paragraph (1) that are entered, or withdrawn from warehouse for consumption, on or after the date of the determinations.

(4) TERMINATION OF PROVISIONAL RELIEF.—

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

(i) the President makes a negative determination under subsection (a) regarding serious damage or actual threat thereof by imports of such article;

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

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

(iv) the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) SUSPENSION OF LIQUIDATION.—Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) RATES OF DUTY.—If an increase in, or the imposition of, a duty that is provided under subsection (b) on an imported article is different from a duty increase or imposition that was provided for such an article under this subsection, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(D) RATE OF DUTY IF PROVISIONAL RELIEF.—If provisional relief is provided under this subsection with respect to an imported article and neither a duty increase nor a duty imposition is provided under subsection (b) for such article, the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at the rate of duty that applied before the provisional relief was provided.

SEC. 323. PERIOD OF RELIEF.

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

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

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

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

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

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

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

(A) subtitle A; or

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

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

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

SEC. 327. COMPENSATION AUTHORITY.

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

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

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

SEC. 331. FINDINGS AND ACTION ON GOODS FROM AUSTRALIA.

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

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

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

TITLE IV—PROCUREMENT

SEC. 401. ELIGIBLE PRODUCTS.

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

(1) by striking "or" at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting "; or"; and

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

"(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free

trade agreement for procurement by the United States.".

Results of Mark up
June 23, 2004
&
June 24, 2004

Proposed Legislation Implementing the U.S. – Australia Free Trade Agreement

The Conrad Amendment # 2, Committee amendment #3, was adopted by roll call vote, 11 ayes to 10 nays on June 23, 2004.
Ayes: Snowe, Baucus, Rockefeller (proxy), Daschle (proxy), Breaux, Conrad, Graham (proxy), Jeffords (proxy), Bingaman (proxy), Kerry (proxy), Lincoln.
Nays: Grassley, Hatch, Nickles (proxy), Lott (proxy), Kyl, Thomas, Santorum (proxy), Frist (proxy), Smith (proxy), Bunning (proxy).

The Finance Committee met in executive session on June 24, 2004 to consider favorably approving the Committee's recommendation, as amended, to the proposed legislation implementing the U.S. – Australia Free Trade Agreement.

The recorded vote was 7 ayes, 14 nays.
Ayes: Baucus, Breaux, Graham, Jeffords, Bingaman, Kerry (proxy), Lincoln
Nays: Grassley, Hatch, Nickles, Lott, Snowe, Kyl, Thomas, Santorum, Frist, Smith, Bunning, Rockefeller, Daschle, Conrad